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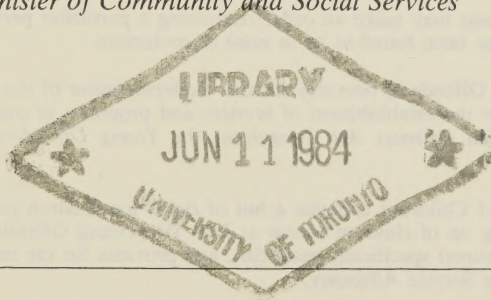


# Bill 77

## An Act respecting the Protection and Well-being of Children and their Families

The Hon. F. Drea

*Minister of Community and Social Services*



*1st Reading* May 18th, 1984

*2nd Reading*

*3rd Reading*

*Royal Assent*

## EXPLANATORY NOTE

The Bill is an extensive revision and consolidation of all the statutes dealing with children's services that the Ministry of Community and Social Services administers, except the *Day Nurseries Act*. It contains twelve distinct Parts as well as an introductory declaration of principles.

*Part I* (Flexible Services) deals in a uniform and comprehensive way with the funding and delivery of children's services and the administration of the Act, incorporating provisions from several existing statutes such as the *Children's Residential Services Act*. It also gives the Minister broad take-over and revocation powers.

*Part II* (Voluntary Access to Services) deals with services (including care under temporary care and special needs agreements) given on a voluntary basis rather than under a court order. While services to children generally require parental consent, children over twelve may obtain counselling services without parental involvement.

Part II also provides for the establishment of Residential Placement Advisory Committees to review institutional placements and placements of children twelve or older who object to their placement. These children may obtain a further review by the Children's Services Review Board if not satisfied with the results of the first review.

*Part III* (Child Protection) is a revision of Part II of the *Child Welfare Act*. Some of the major changes are:

1. The definitions of "child in need of protection" and "child's best interests" are revised and expanded.
2. Children's aid societies are required to establish internal review procedures to handle complaints.
3. Abuse reporting requirements are expanded and clarified, and societies are required to refer cases of possible abuse to review teams for their recommendations.
4. The court may make an order restraining a particular person's access to a child who has been found to be in need of protection.

*Part IV* (Young Offenders) provides for the implementation of the *Young Offenders Act* (Canada) and for the establishment of services and programs in connection with that Act and the *Provincial Offences Act*. It replaces the *Young Offenders Implementation Act, 1984*.

*Part V* (Rights of Children) contains a bill of rights for children in residential care, prohibits the locking up of children except as Part IV (Young Offenders) and Part VI (Extraordinary Measures) specifically authorize, and provides for the creation of an Office of Child and Family Service Advocacy.

*Part VI* (Extraordinary Measures) sets out procedures for the admission of mentally disturbed children to secure treatment facilities and regulates the use of secure isolation, intrusive measures and psychotropic drugs in respect of children receiving care.

*Part VII* (Adoption) is a revision of Part III (Adoption) of the *Child Welfare Act* (except its licensing provisions). Some of the major changes are:

1. Single, divorced and widowed persons and couples who live together in a conjugal relationship are placed on the same footing, with respect to adoption, as married couples.
2. Foster parents who wish to adopt their foster child may have a Director review the matter.



3. Birth parents must be informed of their rights and given an opportunity to seek counselling and legal advice before consenting to their child's adoption.
4. The court may not make access orders in favour of birth parents and their relatives once an adoption order is made.

*Part VIII* (Confidentiality of and Access to Records) controls the disclosure of personal records created and kept by service providers in the course of providing services to children and families. Subject to specific exceptions, such records may not be disclosed without the consent of the individuals concerned, and individuals have a general right of access to their own records.

*Part IX* (Licensing) is a revision of the licensing provisions contained in the *Children's Residential Services Act* and *Part III* (Adoption) of the *Child Welfare Act*.

*Part X* (Indian and Native Child and Family Services) provides for the involvement of Indian bands and native communities in child and family services to their own members and gives recognition to customary care.

*Part XI* (Regulations) contains regulation making powers.

*Part XII* (Transition and Repeals) contains repeals and consequential amendments.





Bill 77

1984

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

Declaration  
of  
principles

**1.** The purposes of this Act are,

- (a) as a paramount objective, to promote the best interests, protection and well-being of children;
- (b) to recognize that while parents often need help in caring for their children, that help should give support to the autonomy and integrity of the family unit and, wherever possible, be provided on the basis of mutual consent;
- (c) to recognize that the least restrictive or disruptive course of action that is available and is appropriate in a particular case to help a child or family should be followed;
- (d) to recognize that children's services should be provided in a manner that,
  - (i) respects children's needs for continuity of care and for stable family relationships, and
  - (ii) takes into account physical and mental developmental differences among children;
- (e) to recognize that, wherever possible, services to children and their families should be provided in a manner that respects cultural, religious and regional differences; and
- (f) to recognize that Indian and native people should be entitled to provide, wherever possible, their own child and family services, and that all services to Indian and native children and families should be provided in a manner that recognizes their culture, heritage and traditions and the concept of the extended family.

French  
language  
services

**2.—(1)** Service providers shall, where appropriate, make services to children and their families available in the French language.

Duties of  
service  
providers

**(2)** Service providers shall ensure,

- (a) that children and their parents have an opportunity to be heard and represented when decisions affecting their interests are made and to be heard when they have concerns about the services they are receiving; and

- (b) that decisions affecting the interests and rights of children and their parents are made according to clear, consistent criteria and are subject to procedural safeguards.

#### INTERPRETATION

### 3.—(1) In this Act,

Interpretation

1. “agency” means a corporation;
2. “approved agency” means an agency that is approved under subsection 9 (1) of Part I (Flexible Services);
3. “approved service” means a service provided,
  - i. under subsection 8 (1) of Part I or with the support of a grant or contribution made under subsection 8 (2) of that Part,
  - ii. by an approved agency, or
  - iii. under the authority of a licence;
4. “band” has the same meaning as in the *Indian Act* R.S.C. 1970,  
c. I-6 (Canada);
5. “Board” means the Children’s Services Review Board continued under Part IX (Licensing);
6. “child” means a person under the age of eighteen years;
7. “child development service” means a service for a child with a developmental or physical handicap, and for such a child’s family;
8. “child treatment service” means a service for a child with a mental or psychiatric disorder, and for such a child’s family;
9. “child welfare service” means,
  - i. a residential service, prevention service or other service provided under Part II (Voluntary Access to Services),
  - ii. a service provided under Part III (Child Protection),



- iii. an adoption service provided under Part VII (Adoption), or
  - iv. individual or family counselling;
- 10. "community support service" means a support service or counselling service provided in the community for a child and the child's family;
  - 11. "court" means the Provincial Court (Family Division) or the Unified Family Court;
  - 12. "developmental handicap" means a condition of mental impairment present or occurring in a person's formative years that is associated with limitations in adaptive behaviour;
  - 13. "Director" means a Director appointed under subsection 6 (1) of Part I (Flexible Services);
  - 14. "foster care" means the provision of residential care to a child, by and in the home of a person who,
    - i. receives compensation for caring for the child, except under the *Family Benefits Act*, the *General Welfare Assistance Act*, or the regulations made under either of them, and
    - ii. is not the child's parent or a person with whom the child has been placed for adoption under Part VII,

R.S.O. 1980,  
cc. 151, 188

and "foster home" and "foster parent" have corresponding meanings;

R.S.C. 1970,  
c. 1-6

- 15. "Indian" has the same meaning as in the *Indian Act* (Canada);
- 16. "licence" means a licence issued under Part IX (Licensing), and "licensed" and "licensee" have corresponding meanings;
- 17. "local director" means a local director appointed under section 17 of Part I (Flexible Services);
- 18. "Minister" means the Minister of Community and Social Services;

19. "native community" means a community designated by the Minister under section 192 of Part X (Indian and Native Child and Family Services);
20. "native person" means a person who is a member of a native community but is not a member of a band, and "native child" has a corresponding meaning;
21. "order" includes a refusal to make an order;
22. "prescribed" means prescribed by the regulations;
23. "program supervisor" means a program supervisor appointed under subsection 6 (2) of Part I (Flexible Services);
24. "regulations" means the regulations made under this Act;
25. "residential service" means boarding, lodging and associated supervisory, sheltered or group care provided for a child away from the home of the child's parent, and "residential care" and "residential placement" have corresponding meanings;
26. "service" means,
  - i. a child development service,
  - ii. a child treatment service,
  - iii. a child welfare service,
  - iv. a community support service, or
  - v. a young offenders service;
27. "service provider" means,
  - i. the Minister,
  - ii. an approved agency,
  - iii. a society,
  - iv. a licensee, or

v. a person who provides an approved service or provides a service purchased by the Minister or an approved agency;

28. “society” means an approved agency designated as a children’s aid society under subsection 16 (2) of Part I (Flexible Services);

29. “young offenders service” means a service provided under Part IV (Young Offenders) or under a program established under that Part.

Idem:  
“parent”

(2) In this Act, a reference to a child’s parent shall be deemed to be a reference to,

- (a) both parents, where both have custody of the child;
- (b) one parent, where that parent has lawful custody of the child or the other parent is unavailable or unable to act as the context requires; or
- (c) another individual, where that individual has lawful custody of the child,

except where this Act provides otherwise.

#### CONSENTS AND PARTICIPATION IN AGREEMENTS

Interpretation

4.—(1) In this section,

- (a) “capacity” means the capacity to understand and appreciate the nature of a consent or agreement and the consequences of giving, withholding, or revoking the consent or making, not making or terminating the agreement; and
- (b) “nearest relative”, when used in reference to a person who is a child, means a person with lawful custody of the child, and when used in reference to a person who is not a child, has the same meaning as in the *Mental Health Act*.

R.S.O. 1980,  
c. 262

Elements of  
valid consent  
or  
agreement,  
etc.

(2) A person’s consent or revocation of a consent or participation in or termination of an agreement under this Act is valid if, at the time the consent is given or revoked or the agreement is made or terminated, the person,

- (a) has capacity;



- (b) is reasonably informed as to the nature and consequences of the consent or agreement, and of alternatives to it;
- (c) gives or revokes the consent or executes the agreement or notice of termination voluntarily, without coercion or undue influence; and
- (d) has had a reasonable opportunity to obtain independent advice.

(3) A person's nearest relative may give or revoke a consent or participate in or terminate an agreement on the person's behalf if it has been determined on the basis of an assessment, not more than two years before the nearest relative acts on the person's behalf, that the person does not have capacity.

Where  
person  
lacks  
capacity

(4) Subsection (3) does not apply to a consent under section 131 (consents to adoption) of Part VII (Adoption) or to a parent's consent referred to in clause 38 (2) (1) (child in need of protection) of Part III (Child Protection).

Exception

(5) A person's consent or revocation of a consent or participation in or termination of an agreement under this Part is not invalid by reason only that the person is less than eighteen years old.

Consent,  
etc., of  
minor

## PART I

## FLEXIBLE SERVICES

Interpretation      **5.** In this Part, “child welfare review committee” means a child welfare committee appointed in accordance with the regulations.

## DIRECTORS AND PROGRAM SUPERVISORS

Appointment of Director      **6.—(1)** The Minister may appoint any person as a Director to perform any or all of the duties and functions and exercise any or all of the powers of a Director under this Act and the regulations.

Appointment of program supervisor      (2) The Minister may appoint any person as a program supervisor to perform any or all of the duties and functions and exercise any or all of the powers of a program supervisor under this Act and the regulations.

Limitations, etc., on appointments      (3) The Minister may set out in an appointment made under this section any conditions or limitations to which it is subject.

Remuneration and expenses  
R.S.O. 1980, c. 418      (4) The remuneration and expenses of a person appointed under this section who is not a public servant under the *Public Service Act* shall be fixed by the Minister and shall be paid out of legislative appropriations.

Reports and information      (5) A service provider shall,  
  
    (a) make the prescribed reports and furnish the prescribed information to the Minister, in the prescribed form and at the prescribed intervals; and  
  
    (b) make a report to the Minister whenever the Minister requests it, in the form and containing the information specified by the Minister.

Powers of program supervisor      **7.—(1)** For the purpose of ensuring compliance with this Act and the regulations a program supervisor may, at all reasonable times, upon producing proper identification, enter premises where an approved service is provided, inspect the facilities, the service provided, the books of account and the records relating to the service, and make copies of those books and records or remove them from the premises to copy them as may be reasonably required.

Offence      (2) No person shall hinder, obstruct or attempt to hinder or obstruct a program supervisor in the performance of the pro-

gram supervisor's duties or give false information about an approved service to a program supervisor.

(3) No service provider or person in charge of premises where an approved service is provided shall refuse to give a program supervisor access to the books and records referred to in subsection (1) or refuse to give a program supervisor information about the approved service that the program supervisor reasonably requires. Idem

(4) A program supervisor shall exercise the power of entry set out in subsection (1) in accordance with the regulations. Regulations re exercise of power of entry

#### APPROVALS AND FUNDING

**8.—**(1) The Minister may,

- (a) provide services and establish, operate and maintain facilities for the provision of services; and Provision of services directly or by purchase
- (b) make agreements with persons and agencies for the provision of services,

and may make payments for those services and facilities out of legislative appropriations.

(2) The Minister may make grants and contributions, out of legislative appropriations, to any person, organization or municipality for consultation, research and evaluation with respect to services and for the provision of services. Grants and contributions for services, consultation, etc.

**9.—**(1) Where the Minister is satisfied that an agency is, with financial assistance under this Part and the regulations, financially capable of establishing, maintaining and operating a service and that its affairs are carried on under competent management in good faith, the Minister may approve the agency to provide that service. Approval of agencies

(2) Where the Minister intends to approve an agency to provide a service under subsection (1), the Minister may enter into an agreement with the agency for the establishment of the service. Funding for establishment of services

(3) Where the Minister approves an agency to provide a service under subsection (1), the Minister may give the agency financial assistance, including capital and operating assistance, and other assistance, in accordance with the regulations, for the provision of the service. Financial assistance, etc.



Effective  
date

(4) The Minister's approval under subsection (1) shall be deemed to have retroactive effect if the Minister so specifies.

Approval of  
premises for  
provision  
of services

**10.**—(1) Where the Minister is satisfied that premises are suitable for providing a service, the Minister may approve all or any part of the premises for the provision of the service by an approved agency and may give the agency financial assistance, including capital and operating assistance, and other assistance, in accordance with the regulations, for the maintenance and operation of the premises and the provision of the service.

Effective  
date

(2) The Minister's approval of premises under subsection (1) shall be deemed to have retroactive effect if the Minister so specifies, but it shall not be deemed to take effect on a day before the Minister's approval of the agency concerned becomes effective under section 9.

Terms and  
conditions

**11.**—(1) The Minister may impose terms and conditions on an approval given under subsection 9 (1) or 10 (1) and may vary, remove or amend the terms and conditions or impose new terms and conditions at any time.

Services  
to persons  
over  
eighteen

(2) The Minister may,

- (a) provide services under clause 8 (1) (a);
- (b) make agreements for the provision of services under clause 8 (1) (b);
- (c) make grants and contributions for the provision of services under subsection 8 (2);
- (d) approve agencies for the provision of services under subsection 9 (1);
- (e) approve premises for the provision of services under subsection 10 (1),

to persons who are not children, and to their families, as if those persons were children.

Co-ordinating  
and advisory  
groups

**12.** The Minister may make agreements with persons, organizations or municipalities for the establishment, support and operation of co-ordinating or advisory groups or committees, may make payments for the purpose out of legislative appropriations and may give other assistance for the purpose.

Security for  
payment of  
funds

**13.** The Minister may, as a condition of making a payment under this Part or the regulations, require the recipient of the

funds to secure them by way of mortgage, lien, registration of agreement or in such other manner as the Minister determines.

**14.**—(1) An approved agency shall file a certified copy of its by-laws and of any amendment to them with the Minister forthwith after they are made. By-laws of approved agency

(2) The by-laws of an approved agency shall contain the prescribed provisions. Idem

(3) An approved agency that provides services to Indian or native children and families shall have the prescribed number of band or native community representatives on its board of directors, appointed in the prescribed manner and for the prescribed terms. Band or native community representatives

(4) An employee of an approved agency shall not be a member of the agency's board of directors. Employee may not sit on board

**15.** No approved agency shall place a child in a residential placement except in accordance with this Act and the regulations. Placements must comply with Act and regulations

#### CHILDREN'S AID SOCIETIES

**16.**—(1) In this section, "prescribed" means prescribed in a regulation made by the Minister under subsection 198 (3) of Part XI (Regulations). Interpretation

(2) The Minister may designate an approved agency as a children's aid society for any or all of the functions set out in subsection (3), may, in a designation, impose terms and conditions and may vary, remove or amend the terms and conditions or impose new terms and conditions at any time and may at any time amend a designation to provide that the society is no longer designated for a particular function set out in subsection (3). Designation of children's aid society

(3) The functions of a children's aid society are to, Functions of society

- (a) investigate allegations or evidence that children may be in need of protection;
- (b) protect children where necessary;
- (c) provide guidance, counselling and other services to families for protecting children or for the prevention of circumstances requiring the protection of children;

- (d) provide care for children assigned or committed to its care under this or any other Act;
- (e) supervise children assigned to its supervision under this or any other Act;
- (f) place children for adoption under Part VII; and
- (g) perform any other duties given to it by this or any other Act.

Prescribed standards, etc.

(4) A society shall,

- (a) provide the prescribed standard of services in its performance of its functions; and
- (b) follow the prescribed procedures and practices.

By-laws require approval

(5) A by-law and an amendment to a by-law of a society do not come into force until they are approved by the Minister.

Appointment of local director

**17.** Every society shall appoint a local director with the prescribed qualifications, powers and duties.

Duties of Director with respect to societies

**18.—(1)** A Director,

- (a) shall advise and supervise societies;
- (b) shall inspect or direct and supervise the inspection of the operation and records of societies;
- (c) shall exercise the powers and duties of a society in any area in which no society is functioning;
- (d) shall inspect or direct and supervise the inspection of places in which children in the care of societies are placed; and
- (e) shall ensure that societies provide the standard of services and follow the procedures and practices required by subsection 16 (4).

Director may designate places of safety

(2) A Director may designate a place as a place of safety, and may designate a class of places as places of safety, for the purposes of Part III (Child Protection).

Municipal representatives

**19.** The board of directors of a society shall include the prescribed number of municipal representatives, appointed in the prescribed manner and for the prescribed terms.



**20.**—(1) An amount determined in accordance with the regulations shall be paid to a society out of legislative appropriations. Payments by Minister

(2) A municipality shall pay to the society having jurisdiction in that municipality an amount, determined in accordance with the regulations, of the part of the society's expenditures that is referable to the municipality. Payments by municipalities

(3) An amount payable to a society under subsection (1) or (2), including advances on expenditures before they are incurred, shall be paid at the times and in the manner determined by the Minister. Manner of payment

(4) A municipality or a society may request in the prescribed manner that a child welfare review committee review, in accordance with the regulations, any amount payable to a society under subsection (2). Review by child welfare review committee

**21.**—(1) The council of a municipality shall pass by-laws for the levying of the amounts necessary to meet the liability imposed under subsection 20 (2) and may pass by-laws to afford to a society other assistance that the council considers advisable. Power to make levies

(2) A society shall be deemed to be a local board of each municipality in which it has jurisdiction for the purposes of the *Ontario Municipal Employees Retirement System Act* and the *Municipal Conflict of Interest Act, 1983*. Society deemed to be a local board  
R.S.O. 1980, c. 348; 1983, c. 8

AGREEMENTS WITH OTHER GOVERNMENTS

**22.** The Minister may, with the approval of the Lieutenant Governor in Council, make agreements on behalf of the Government of Ontario with the Crown in right of Canada and with the Crown in right of any other province of Canada respecting services to children or the care or protection of children. Minister may make agreements with other governments

REVOCATION AND TAKE-OVER POWERS

**23.**—(1) Where the Minister believes on reasonable grounds that, Powers of Minister

- (a) an approved agency is not providing services in accordance with this Act or the regulations or in accordance with any term or condition imposed on the approval under subsection 9 (1) or 10 (1) or, in the case of a society, on the designation under subsection 16 (2);

- (b) a director, officer or employee of an approved agency has contravened or knowingly permitted any person under his or her control and direction to contravene any provision of this Act or the regulations or any term or condition imposed on the approval under subsection 9 (1) or 10 (1) or, in the case of a society, on the designation under subsection 16 (2);
- (c) approval of the agency under subsection 9 (1) or of the premises under subsection 10 (1) would be refused if it were being applied for in the first instance; or
- (d) in the case of a society, the society is not able to perform any or all of its functions under section 16,

the Minister may,

- (e) revoke or suspend the approval;
- (f) in the case of a society, revoke or suspend the designation under subsection 16 (1);
- (g) remove any or all of the members of the agency's board of directors and appoint others in their place; or
- (h) operate and manage the agency in the place of the agency's board of directors.

Notice of  
proposal

(2) Where the Minister proposes to act under clause (1) (e), (f), (g) or (h), the Minister shall serve notice of the proposal and written reasons for it on the approved agency, unless the agency has requested that the Minister so act or has consented to the Minister's proposal.

Request for  
hearing

(3) A notice under subsection (2) shall inform the agency that it is entitled to a hearing under this section if the agency mails or delivers to the Minister, within sixty days after the notice under subsection (2) is served, a written request for a hearing.

Where  
agency  
does not  
request  
hearing

(4) Where the agency does not require a hearing under subsection (3), the Minister may carry out the proposal stated in the Minister's notice under subsection (2) without a hearing.

Hearing

(5) Where the agency requires a hearing under subsection (3),

- (a) if the Minister proposes to act under clause (1) (e) only, the Minister; and
- (b) in all other cases, the Lieutenant Governor in Council,

shall appoint one or more persons not employed by the Ministry to hear the matter and determine whether the Minister should carry out the proposal.

(6) Sections 17, 18, 19 and 20 of the *Statutory Powers Procedure Act* do not apply to a hearing under this section.

R.S.O. 1980,  
c. 484,  
ss. 17-20  
do not apply

(7) The person or persons appointed under subsection (5) shall hold a hearing and make a report to the Minister setting out,

Report to  
Minister

- (a) recommendations as to the carrying out of the proposal; and
- (b) the findings of fact, any information or knowledge used in making the recommendations and any conclusions of law arrived at that are relevant to the recommendations,

and shall provide a copy of the report to the agency.

(8) After considering a report made under this section, the Minister may carry out the proposal and shall give notice of the Minister's decision to the agency with reasons.

Minister's  
decision

(9) Despite subsection (2), the Minister, by notice to the agency and without a hearing, may provisionally exercise any of the powers set out in clauses (1) (e), (f), (g) and (h) where it is necessary to do so, in the Minister's opinion, to avert an immediate threat to the public interest or to a person's health, safety or welfare and the Minister so states in the notice, with reasons, and thereafter the Minister shall cause a hearing to be held and subsections (3) to (8) apply with necessary modifications.

Provisional  
suspension

**24.—**(1) Where the Minister is of the opinion, upon reasonable grounds, that an activity carried on, or the manner of carrying on an activity, in the course of the provision of an approved service is causing or is likely to cause harm to a person's health, safety or welfare, the Minister may by order require the service provider to suspend or cease the activity and may take such other action as the Minister deems to be in the best interests of the persons receiving the approved service.

Minister's  
order to  
cease activity

Notice of  
proposal

(2) Where the Minister proposes to make an order requiring the suspension or cessation of an activity under subsection (1), the Minister shall serve notice of the proposal and written reasons for it on the service provider, and subsections 23 (3) to (8), except clause (5) (b), apply with necessary modifications.

Where order  
may be made  
immediately

(3) Despite subsection (2), the Minister, by notice to the service provider and without a hearing, may require that the service provider immediately suspend or cease the activity where the continuation of the activity is, in the Minister's opinion, an immediate threat to the public interest or to a person's health, safety or welfare and the Minister so states in the notice, with reasons, and thereafter the Minister shall cause a hearing to be held and subsections 23 (3) to (8), except clause (5) (b), apply with necessary modifications.

Minister  
has powers  
of board

**25.**—(1) Where the Minister operates and manages an agency under clause 23 (1) (h), the Minister has all the powers of its board of directors.

Idem

(2) Without restricting the generality of subsection (1), where the Minister operates and manages an agency under clause 23 (1) (h), the Minister may,

- (a) carry on the agency's business;
- (b) enter into contracts on the agency's behalf;
- (c) arrange for bank accounts to be opened in the agency's name, and authorize persons to sign cheques and other documents on the agency's behalf;
- (d) appoint or dismiss employees of the agency; and
- (e) make by-laws.

Occupation  
and  
operation  
of premises

(3) Without restricting the generality of subsection (1), where the Minister operates and manages an agency under clause 23 (1) (h), the Minister may,

R.S.O. 1980,  
c. 148

- (a) despite sections 25 and 41 of the *Expropriations Act*, immediately occupy and operate, or arrange for the occupation and operation by a person or organization designated by the Minister, of any premises occupied or used by the agency for the provision of approved services; or
- (b) apply without notice to the District Court for an order directing the sheriff to assist the Minister as may be necessary in occupying the premises.



(4) The Minister shall not occupy and operate premises under subsection (3) for a period exceeding one year without the agency's consent, but the Lieutenant Governor in Council may extend the period from time to time.

Maximum  
period

#### OFFENCES

**26.** A person who knowingly,

Offence

- (a) fails to furnish a report required by the Minister under subsection 6 (5);
- (b) contravenes subsection 7 (2) or (3) (obstructing program supervisor, etc.); or
- (c) furnishes false information in an application under this Part or in a report or return required under this Part or the regulations,

and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention or furnishing by the corporation, is guilty of an offence and is liable upon conviction to a fine of not more than \$2,000.

## PART II

## VOLUNTARY ACCESS TO SERVICES

Interpretation

**27.** In this Part,

- (a) “advisory committee” means a Residential Placement Advisory Committee established under subsection 35 (2);
- (b) “institution” means premises, other than a maternity home, in which residential services are provided to ten or more children at a time;
- (c) “record”, when used in reference to a person, has the same meaning as in Part VIII (Confidentiality of and Access to Records);
- (d) “special need” means a need that is related to or caused by a behavioural, developmental, emotional, physical, mental or other handicap.

## CONSENTS

Consent to service: person over sixteen

S.C. 1980-81-82-83, c. 110

**28.—**(1) A service provider may provide a service to a person who is sixteen years of age or older only with the person’s consent, except where the court orders under this Act or a youth court orders under the *Young Offenders Act* (Canada) that the service be provided to the person.

Consent to residential service: child under sixteen

(2) A service provider may provide a residential service to a child who is less than sixteen years of age only with the consent of the child’s parent or, where the child is in a society’s lawful custody, the society’s consent, except where this Act provides otherwise.

Discharge from residential placement

(3) A child who is placed in a residential placement with the consent referred to in subsection (2) may only be discharged from the placement,

- (a) with the consent that would be required for a new residential placement; or
- (b) where the placement is made under the authority of an agreement made under subsection 30 (1) (temporary care agreements) or subsection 31 (1) or (2) (special needs agreements), in accordance with section 34 (termination by notice).

(4) A child who is placed in a residential placement with the consent referred to in subsection (2) shall not be transferred from one placement to another unless the consent that would be required for a new residential placement is given.

Transfer  
to another  
placement

(5) Before a child is placed in or discharged from a residential placement or transferred from one residential placement to another with the consent referred to in subsection (2), the service provider shall take the child's wishes into account, if they can be reasonably ascertained.

Child's  
wishes

**29.** A service provider may provide a counselling service to a child who is twelve years of age or older with the child's consent, and no other person's consent is required, but if the child is less than sixteen years of age the service provider shall discuss with the child at the earliest appropriate opportunity the desirability of involving the child's parent.

Counselling  
service:  
child twelve  
or older

#### TEMPORARY CARE AGREEMENTS

**30.—(1)** A person who is temporarily unable to care adequately for a child in his or her custody, and the society having jurisdiction where the person resides, may make a written agreement for the society's care and custody of the child.

Temporary  
care  
agreement

(2) No temporary care agreement shall be made in respect of a child who is twelve years of age or older unless the child is a party to the agreement.

Child  
twelve  
or older

(3) Subsection (2) does not apply where it has been determined on the basis of an assessment, not more than two years before the agreement is made, that the child does not have capacity to participate in the agreement because of a developmental handicap.

Exception:  
develop-  
mental  
handicap

(4) A society shall not make a temporary care agreement unless the society,

Duty of  
society

- (a) has determined that an appropriate residential placement that is likely to benefit the child is available; and
- (b) is satisfied that no less restrictive course of action, such as care in the child's own home, is appropriate for the child in the circumstances.

(5) No temporary care agreement shall be made for a term exceeding six months, but the parties to a temporary care agreement may, with a Director's written approval, agree to extend it for a further period or periods if the total term of

Term  
of agreement  
limited

the agreement, as extended, does not exceed an aggregate of twelve months.

Twenty-four  
month rule

(6) No temporary care agreement shall be made or extended so as to result in a child being in a society's care and custody, whether under a temporary care agreement or under a temporary order or order for society wardship made under Part III (Child Protection), for a continuous period exceeding twenty-four months.

Authority  
to consent  
to medical  
treatment  
may be  
transferred

(7) A temporary care agreement may provide that the society is entitled to consent to medical treatment for the child where a parent's consent would otherwise be required.

Contents of  
temporary  
care  
agreement

(8) A temporary care agreement shall include:

1. A statement by all the parties to the agreement that the child's care and custody are transferred to the society.
2. A statement by all the parties to the agreement that the child's placement is voluntary.
3. A statement, by the person referred to in subsection (1), that he or she is temporarily unable to care for the child adequately and has discussed with the society alternatives to residential placement of the child.
4. An undertaking by the person referred to in subsection (1) to maintain contact with the child and be involved in the child's care.
5. If it is not possible for the person referred to in subsection (1) to maintain contact with the child and be involved in the child's care, the person's designation of another named person who is willing to do so.
6. The name of the individual who is the primary contact between the society and the person referred to in subsection (1).
7. Such other provisions as are prescribed.

Designation  
by advisory  
committee

(9) Where the person referred to in subsection (1) does not give an undertaking under paragraph 4 or designate another person under paragraph 5 of subsection (8), an advisory committee that has jurisdiction may, in consultation with the



society, name a suitable person who is willing to maintain contact with the child and be involved in the child's care.

(10) The parties to a temporary care agreement may vary the agreement from time to time in a manner that is consistent with this Part and the regulations made under it.

Variation of agreement

SPECIAL NEEDS AGREEMENTS

**31.**—(1) A person who is unable to provide the services required by a child in his or her custody because the child has a special need, and a society having jurisdiction where the person resides, may with a Director's written approval make a written agreement for,

Special needs agreement with society

- (a) the society's provision of services to meet the child's special need; and
- (b) the society's supervision or care and custody of the child.

(2) A person who is unable to provide the services required by a child in his or her custody because the child has a special need, and the Minister, may make a written agreement for,

Special needs agreement with Minister

- (a) the Minister's provision of services to meet the child's special need; and
- (b) the Minister's supervision or care and custody of the child.

(3) A special needs agreement shall only be made for a specific period, but may be extended, with a Director's written approval in the case of an agreement with a society, for a further period or periods.

Term to be specified

(4) Where a special needs agreement provides for a child's residential placement, subsections 30 (7), (8), (9) and (10) (authority to consent to medical treatment, contents of agreement, variation) apply with necessary modifications, and subsection 30 (4) (duty of society) applies to the society or the Minister, as the case may be, with necessary modifications.

s. 30 (7-10) apply

SIXTEEN AND SEVENTEEN YEAR OLDS

**32.**—(1) A child who is sixteen years of age or older and is not in the care of his or her parent, and the society having jurisdiction where the person resides, may with a Director's written approval make a written agreement for the provision of services to the child by the society.

Society agreements with sixteen and seventeen year olds

Idem:  
special  
needs  
agreement  
with  
Minister

(2) A child who is sixteen years of age or older and is not in the care of his or her parent and has a special need, and the Minister, may make a written agreement for the Minister's provision of services to meet the person's special need.

Contents  
of  
agreements

(3) An agreement made under subsection (1) or (2) shall contain the prescribed provisions.

s. 30 (10)  
applies

(4) Subsection 30 (10) (variation) applies to an agreement made under subsection (1) or (2).

#### EXPIRY AND TERMINATION OF AGREEMENTS

Agreement  
expires at  
eighteen

**33.** No agreement made under section 30, 31 or 32 shall continue beyond the eighteenth birthday of the person who is its subject.

Notice of  
termination  
of  
agreement

**34.—**(1) A party to an agreement made under section 30, 31 or 32 may terminate the agreement at any time by giving every other party written notice that he or she wishes to terminate the agreement.

When  
notice  
takes  
effect

(2) Where notice is given under subsection (1), the agreement terminates on the expiry of five days, or such longer period as the agreement specifies, after the day on which every other party has actually received the notice.

Return  
of child,  
etc.,  
by society

(3) Where notice of a wish to terminate an agreement for care and custody made under subsection 30 (1) or 31 (1) is given by or to a society under subsection (1), the society shall as soon as possible, and in any event before the agreement terminates under subsection (2),

(a) cause the child to be returned to the person who made the agreement, or to a person who has obtained an order for the child's custody since the agreement was made; or

(b) where the society is of the opinion that the child would be in need of protection within the meaning of subsection 38 (2) of Part III (Child Protection) if returned to the person referred to in clause (a), bring the child before the court under that Part to determine whether the child would be in need of protection in that case, and thereafter Part III applies to the child, with necessary modifications.

Idem:  
Minister

(4) Where notice of a wish to terminate an agreement for care and custody made under subsection 31 (2) is given by or

to the Minister under subsection (1), subsection (3) applies to the Minister, with necessary modifications.

(5) Where a temporary care agreement expires or is about to expire under subsection 30 (6), and where a temporary care agreement or a special needs agreement that provides for care and custody expires or is about to expire according to its own terms and is not extended, the society or the Minister, as the case may be, shall before the agreement expires or as soon as practicable thereafter,

Idem:  
expiry  
of  
agreement

- (a) cause the child to be returned to the person who made the agreement, or to a person who has obtained an order for the child's custody since the agreement was made; or
- (b) where the society or the Minister, as the case may be, is of the opinion that the child would be in need of protection within the meaning of subsection 38 (2) of Part III (Child Protection) if returned to the person referred to in clause (a), bring the child before the court under that Part to determine whether the child would be in need of protection in that case, and thereafter Part III applies to the child, with necessary modifications.

#### REVIEW BY RESIDENTIAL PLACEMENT ADVISORY COMMITTEE

**35.**—(1) In this section, “residential placement” does not include,

Interpretation

- (a) a placement made under the *Young Offenders Act* (Canada) or under Part IV (Young Offenders);
- (b) commitment to a secure treatment program under Part VI (Extraordinary Measures); or
- (c) a placement with a person who is not a service provider.

S.C. 1980-81-82-83,  
c. 110

(2) The Minister may establish Residential Placement Advisory Committees each consisting of,

Residential  
Placement  
Advisory  
Committees

- (a) persons engaged in providing services;
- (b) other persons who have demonstrated an informed concern for the welfare of children;
- (c) one representative of the Ministry; and

- (d) if the Minister wishes, another person or persons whom the Minister considers appropriate,

and shall specify the territorial jurisdiction of each advisory committee.

Payments,  
etc., to  
members

(3) The Minister may pay allowances and reasonable travelling expenses to any or all of the members of an advisory committee, and may authorize an advisory committee to hire support staff.

Duties of  
committee

(4) An advisory committee has a duty to advise, inform and assist parents, children and service providers with respect to the availability and appropriateness of residential services and alternatives to residential services, to conduct reviews under this section, and to name persons for the purpose of subsection 30 (9) (contact with child under temporary care agreement), and has such further duties as are prescribed.

Mandatory  
review by  
committee

(5) An advisory committee shall review,

- (a) every placement in an institution of a child who resides within the advisory committee's jurisdiction, if the placement is intended to last or actually lasts ninety days or more,

(i) within ninety days of the day on which the child is placed in the institution,

(ii) unless the placement is reviewed under subclause (i), within twelve months of the establishment of the committee or within such longer period as the Minister allows, and

(iii) while the placement continues, at least once during each twelve month period succeeding the review under subclause (i) or (ii);

- (b) every residential placement of a child twelve years of age or older who objects to the placement and resides within the advisory committee's jurisdiction,

(i) within the week immediately following the day that is fourteen days after the child is placed, and

(ii) while the placement continues, at least once during each twelve month period succeeding the review under subclause (i); and



- (c) an existing or proposed residential placement of a child that the Minister refers to the advisory committee, within thirty days of the referral.

(6) Subclause (5) (a) (i) does not apply to a residential placement that is made before this Part comes into force. Exception

(7) An advisory committee may at any time review or re-review, on a person's request or on its own initiative, an existing or proposed residential placement of a child who resides within the advisory committee's jurisdiction. Discretionary review

(8) An advisory committee shall conduct a review under this section in an informal manner, in the absence of the public, and in the course of the review may, Review to be informal, etc.

- (a) interview the child, members of the child's family and any representatives of the child and family;
- (b) interview persons engaged in providing services and other persons who may have an interest in the matter or may have information that would assist the advisory committee;
- (c) examine documents and reports that are presented to the committee; and
- (d) examine records of the child and of members of the child's family, as defined in Part VIII (Confidentiality of and Access to Records), that are disclosed to the committee in accordance with that Part.

(9) At an advisory committee's request, a service provider shall assist and co-operate with the advisory committee in its conduct of a review. Service providers to assist advisory committee

(10) In conducting a review, an advisory committee shall, What committee shall consider

- (a) determine whether the child has a special need;
- (b) consider what programs are available for the child in the residential placement or proposed residential placement, and whether a program available to the child is likely to benefit the child;
- (c) consider whether the residential placement or proposed residential placement is appropriate for the child in the circumstances;

- (d) if it considers that a less restrictive alternative to the placement would be more appropriate for the child in the circumstances, specify that alternative; and
- (e) consider the importance of continuity in the child's care and the possible effect on the child of disruption of that continuity.

Recommendations

**36.**—(1) An advisory committee that conducts a review shall advise,

- (a) the service provider;
- (b) any representative of the child;
- (c) the child's parent or, where the child is in a society's lawful custody, the society; and
- (d) the child, where it is reasonable to expect him or her to understand,

of its recommendations as soon as the review has been completed, and shall advise the child of his or her rights under section 37 if the child is twelve years of age or older.

Report of review to Minister

(2) An advisory committee that conducts a review shall, within thirty days of completing the review, make a report of its findings and recommendations to the Minister.

Recommendation for less restrictive service

(3) Where an advisory committee considers that the provision of a less restrictive service to a child would be more appropriate for the child than the residential placement, the advisory committee shall recommend in its report under subsection (2) that the less restrictive service be provided to the child.

Additional reports at Minister's request

(4) An advisory committee shall make a report of its activities to the Minister whenever the Minister requests it, in addition to making the reports required by subsection (2).

Review by Children's Services Review Board

**37.**—(1) A child who is twelve years of age or older and is in a residential placement to which he or she objects may, if the placement has been reviewed by an advisory committee under section 10 and,

- (a) the child is dissatisfied with the advisory committee's recommendation; or
- (b) the advisory committee's recommendation is not followed,

apply to the Board for a determination of where he or she should remain or be placed.

(2) The Board shall conduct a review with respect to an application made under subsection (1) and may do so by holding a hearing. Duty of Board

(3) The Board shall advise the child whether it intends to hold a hearing or not within ten days of receiving the child's application. Idem

(4) The parties to a hearing under this section are the child, the child's parent or, where the child is in a society's lawful custody, the society and a representative of the advisory committee. Parties

(5) The Board shall complete its review and make a determination within thirty days of receiving a child's application, unless, Time for determination

(a) the Board holds a hearing with respect to the application; and

(b) the parties consent to a longer period for the Board's determination.

(6) After conducting a review under subsection (2), the Board may, Board's recommendation

(a) order that the child be transferred to another residential placement;

(b) order that the child be discharged from the residential placement; or

(c) confirm the existing placement.

## PART III

## CHILD PROTECTION

Interpretation

**38.—**(1) In this Part,

- (a) “child” does not include a child as defined in paragraph 6 of subsection 3 (1) who is actually or apparently sixteen years of age or older, unless the child is the subject of an order under this Part;
- (b) “child protection worker” means a Director, a local director or a person authorized by a Director or local director for the purposes of section 41 (bringing child before court);
- (c) “extended family”, when used in reference to a child, means the persons to whom the child is related by blood, marriage or adoption;
- (d) “parent”, when used in reference to a child, means each of,
  - (i) the child’s mother,
  - (ii) an individual described in one of paragraphs 1 to 6 of subsection 8 (1) of the *Children’s Law Reform Act*, unless it is proved on a balance of probabilities that he is not the child’s natural father,
  - (iii) the individual having lawful custody of the child,
  - (iv) an individual who, during the twelve months before intervention under this Part, has demonstrated a settled intention to treat the child as a child of his or her family, or has acknowledged parentage of the child and provided for the child’s support,
  - (v) an individual who, under a written agreement or a court order, is required to provide for the child, has custody of the child or has a right of access to the child, and
  - (vi) an individual who has acknowledged parentage of the child in writing to a society or under section 12 of the *Children’s Law Reform Act*,

R.S.O. 1980,  
c. 68R.S.O. 1980,  
c. 68



but does not include a foster parent;

- (e) “place of safety” means a foster home, a hospital, and a place or one of a class of places designated as such by a Director under subsection 18 (2) of Part I (Flexible Services), but does not include,

(i) a place of secure custody as defined in Part IV (Young Offenders), or

(ii) a place of secure temporary detention as defined in Part IV.

- (2) A child is in need of protection where,

Child in  
need of  
protection

- (a) the child has suffered physical harm, inflicted by the person having charge of the child or caused by that person’s failure to care and provide for or supervise and protect the child adequately;

- (b) there is a substantial risk that the child will suffer physical harm inflicted or caused as described in clause (a);

- (c) the child has been sexually molested or sexually exploited, by the person having charge of the child or by another person where the person having charge of the child knows or should know of the possibility of sexual molestation or sexual exploitation and fails to protect the child;

- (d) there is a substantial risk that the child will be sexually molested or sexually exploited as described in clause (c);

- (e) the child requires medical treatment to cure or prevent physical harm or suffering and the child’s parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, the treatment;

- (f) the child has suffered emotional harm, demonstrated by severe,

(i) anxiety,

(ii) depression,

(iii) withdrawal, or

- (iv) self-destructive or aggressive behaviour,
- and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy the harm;
- (g) there is a substantial risk that the child will suffer emotional harm of the kind described in clause (f), and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, services or treatment to prevent the harm;
- (h) the child suffers from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, treatment to remedy or ameliorate the condition;
- (i) the child has been abandoned, the child's parent has died or is unavailable to exercise his or her custodial rights over the child and has not made adequate provision for the child's care and custody, or the child is in a residential placement and the parent refuses or is unable or unwilling to resume the child's care and custody;
- (j) the child is less than twelve years old and has killed or seriously injured another person or caused serious damage to another person's property, services or treatment are necessary to prevent a recurrence and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, those services or treatment;
- (k) the child is less than twelve years old and has on more than one occasion injured another person or caused loss or damage to another person's property, with the encouragement of the person having charge of the child or because of that person's failure or inability to supervise the child adequately; or
- (l) the child's parent is unable to care for the child and the child is brought before the court with the parent's consent and, where the child is twelve years of

age or older, with the child's consent, to be dealt with under this Part.

(3) Where a person is directed in this Part to make an order or determination in the best interests of a child, the person shall take into consideration those of the following circumstances of the case that he or she considers relevant:

Best  
interests  
of child

1. The child's physical, mental and emotional needs, and the appropriate care or treatment to meet those needs.
2. The child's physical, mental and emotional level of development.
3. The child's cultural background.
4. The religious faith, if any, in which the child is being raised.
5. Where the child is an Indian or a native person, the importance, in recognition of the uniqueness of Indian and native culture, heritage and traditions, of preserving the child's cultural identity.
6. The importance for the child's development of a positive relationship with a parent and a secure place as a member of a family.
7. The child's relationships by blood or through an adoption order.
8. The importance of continuity in the child's care and the possible effect on the child of disruption of that continuity.
9. The merits of a plan for the child's care proposed by a society, including a proposal that the child be placed for adoption or adopted, compared with the merits of the child remaining with or returning to a parent.
10. The child's views and wishes, if they can be reasonably ascertained.
11. The effects on the child of delay in the disposition of the case.

12. The risk that the child may suffer harm through being removed from, kept away from, returned to or allowed to remain in the care of a parent.
13. The degree of risk, if any, that justified the finding that the child is in need of protection.
14. Any other relevant circumstance.

#### LEGAL REPRESENTATION

Legal  
representation  
of child

**39.**—(1) A child may have legal representation at any stage in a proceeding under this Part.

Court to  
consider  
issue

(2) Where a child does not have legal representation in a proceeding under this Part, the court,

- (a) shall, as soon as practicable after the commencement of the proceeding; and
- (b) may, at any later stage in the proceeding,

determine whether legal representation is desirable to protect the child's interests.

Direction for  
legal  
representation

(3) Where the court determines that legal representation is desirable to protect a child's interests, the court shall direct that legal representation be provided for the child.

Criteria

- (4) Where,
  - (a) the court is of the opinion that there is a difference of views between the child and a parent or a society, and the society proposes that the child be removed from a person's care or be made a society or Crown ward under paragraph 2 or 3 of subsection 54 (1);
  - (b) the child is in the society's care and,
    - (i) no parent appears before the court, or
    - (ii) it is alleged that the child is in need of protection within the meaning of clause 38 (2) (a), (c), (f) or (h); or
  - (c) the child is not permitted to be present at the hearing,



legal representation shall be deemed to be desirable to protect the child's interests, unless the court is satisfied, taking into account the child's views and wishes if they can be reasonably ascertained, that the child's interests are otherwise adequately protected.

(5) Where a child's parent is less than eighteen years of age, the Official Guardian shall represent the parent in a proceeding under this Part unless the court orders otherwise. Where parent a minor

#### PARTIES AND NOTICE

**40.**—(1) The following are parties to a proceeding under this Part: Parties

1. The applicant.
2. The society having jurisdiction in the matter.
3. The child's parent.
4. Where the child is an Indian or a native person, a representative chosen by the child's band or native community.

(2) At any stage in a proceeding under this Part, the court shall add a Director as a party on his or her application. Director to be added

(3) Any person, including a foster parent, who has cared for the child continuously during the six months immediately before the hearing, Right to participate

- (a) shall receive notice of the proceeding and may be present at the hearing;
- (b) may be represented by a solicitor; and
- (c) may make submissions to the court,

but shall take no further part in the hearing without leave of the court.

(4) A child twelve years of age or more who is the subject of a proceeding under this Part is entitled to receive notice of the proceeding and to be present at the hearing, unless the court is satisfied that being present at the hearing would cause the child emotional harm and orders that the child not receive notice of the proceeding and not be permitted to be present at the hearing. Child twelve or older

Child  
under twelve

(5) A child less than twelve years of age who is the subject of a proceeding under this Part is not entitled to receive notice of the proceeding or to be present at the hearing unless the court is satisfied that the child,

- (a) is capable of understanding the hearing; and
- (b) will not suffer emotional harm by being present at the hearing,

and orders that the child receive notice of the proceeding and be permitted to be present at the hearing.

Child's  
participation

(6) A child who is the applicant under subsection 61 (4) (status review), receives notice of a proceeding under this Part or has legal representation in a proceeding is entitled to participate in the proceeding and to appeal under section 66 as if he or she were a party.

Dispensing  
with notice

(7) Where the court is satisfied that the time required for notice to a person might endanger the child's health or safety, the court may dispense with notice to that person.

#### BRINGING CHILD BEFORE COURT

Order to  
produce child

**41.—**(1) The court may order, on the application of a child protection worker who believes on reasonable and probable grounds that a child,

- (a) is in need of protection; and
- (b) cannot be protected adequately otherwise than by being brought before the court,

that the person having charge of the child produce the child before the court at the time and place named in the order for a hearing under subsection 44 (1) to determine whether the child is in need of protection.

Warrant to  
apprehend  
child

(2) A justice of the peace who is satisfied on the basis of a child protection worker's sworn information that,

- (a) there are reasonable and probable grounds to believe that a child is in need of protection; or
- (b) a child actually or apparently under the age of sixteen years has left or been removed from a society's lawful care and custody without its consent,

may, where he or she is also satisfied on the basis of the information that an order under subsection (1) or some other less restrictive course of action is not available or will not protect the child adequately, issue a warrant authorizing a child protection worker to bring the child to a place of safety.

(3) Where the court is satisfied, on a person's application upon notice to a society, that there are reasonable and probable grounds to believe that,

Order to produce or apprehend child

- (a) a child is in need of protection, the matter has been reported to the society and no child protection worker has sought an order under subsection (1) or a warrant under subsection (2) or apprehended the child under subsection (6); and
- (b) the child cannot be protected adequately otherwise than by being brought before the court,

the court may order,

- (c) that the person having charge of the child produce him or her before the court at the time and place named in the order for a hearing under subsection 44 (1) to determine whether he or she is in need of protection; or
- (d) where the court is satisfied that an order under clause (c) would not protect the child adequately, that a child protection worker employed by the society bring the child to a place of safety.

(4) It is not necessary, in an information or warrant under subsection (2) or an order made under subsection (1) or (3), to describe the child by name.

Child's name not required

(5) A child protection worker authorized to bring a child to a place of safety by a warrant issued under subsection (2) or an order made under clause (3) (d) may at any time enter the premises specified in the warrant or order, by force if necessary, and may search for and remove the child.

Authority to enter, etc.

(6) A child protection worker who believes on reasonable and probable grounds that,

Apprehension without warrant

- (a) a child,
  - (i) is in need of protection, or

(ii) is actually or apparently under the age of sixteen years and has left or been removed from a society's lawful care and custody without its consent; and

(b) the child's health or safety would be at risk during the time necessary to obtain an order under subsection (1) or a warrant under subsection (2),

may without a warrant bring the child to a place of safety.

Police  
assistance

(7) A child protection worker acting under this section may call for the assistance of a peace officer.

Consent  
to examine  
child

(8) A child protection worker acting under this section may authorize the child's medical examination where a parent's consent would otherwise be required.

Place of  
open  
temporary  
detention

(9) Where a child protection worker who brings a child to a place of safety under this section believes on reasonable and probable grounds that no less restrictive course of action is feasible, the child may be detained in a place of safety that is a place of open temporary detention as defined in Part IV (Young Offenders).

Apprehension  
of child  
under twelve

(10) A peace officer who believes on reasonable and probable grounds that a child actually or apparently under twelve years of age has committed an act in respect of which a person twelve years of age or older could be found guilty of an offence may apprehend the child without a warrant and shall, on doing so,

(a) as soon as practicable, return the child to the child's parent or other person having charge of the child; or

(b) where it is not possible to return the child to the parent or other person within a reasonable time, take the child to a place of safety to be detained there until the child can be returned to the parent or other person.

Notice to  
parent, etc.

(11) The person in charge of a place of safety in which a child is detained under subsection (10) shall make reasonable efforts to notify the child's parent or other person having charge of the child of the child's detention so that the child may be returned to the parent or other person.

Where child  
not returned  
to parent,  
etc., within  
twelve hours

(12) Where a child detained in a place of safety under subsection (10) cannot be returned to the child's parent or other



person having charge of the child within twelve hours of being taken to the place of safety, the child shall be deemed to have been apprehended under subclause (6) (a) (i) as being apparently in need of protection.

(13) Where a child is detained under this Part in a place of safety that has been designated as a place of open temporary detention as defined in Part IV (Young Offenders) and leaves the place without the consent of,

Apprehension of child absent from place of open temporary detention

- (a) the society having care, custody and control of the child; or
- (b) the person in charge of the place of safety,

a peace officer, the person in charge of the place of safety or that person's delegate may apprehend the child without a warrant and,

- (c) take the child to a place of safety to be detained until he or she can be returned;
- (d) arrange for the child to be returned; or
- (e) return the child,

to the first-mentioned place of safety.

(14) Where a person authorized under subsection (6), (10) or (13) believes on reasonable and probable grounds that a child referred to in the relevant subsection is on any premises, the person may without a warrant enter the premises, by force, if necessary, and search for and remove the child.

Right of entry, etc.

(15) A person authorized to enter premises under subsection (5) or (14) shall exercise the power of entry in accordance with the regulations.

Regulations re power of entry

(16) No action shall be instituted against a child protection worker or peace officer for any act done in accordance with this section, unless the act is done maliciously or without reasonable grounds.

Protection from personal liability

(17) A peace officer has the powers of a child protection worker for the purpose of this section.

Peace officer has powers of child protection worker

HEARINGS AND ORDERS

**42.—**(1) In this section, “media” means the press, radio and television media.

Interpretation

Application

(2) This section applies to hearings held under this Part, except hearings under section 73 (child abuse register).

Hearings  
separate  
from  
criminal  
proceedings

(3) A hearing shall be held separately from hearings in criminal proceedings.

Hearings  
private  
unless court  
orders  
otherwise

(4) A hearing shall be held in the absence of the public, subject to subsection (5), unless the court, after considering,

- (a) the wishes and interests of the parties; and
- (b) whether the presence of the public would cause emotional harm to a child present at the hearing,

orders that the hearing be held in public.

Media  
representa-  
tives

(5) Media representatives chosen in accordance with subsection (6) may be present at a hearing that is held in the absence of the public, unless the court makes an order excluding them under subsection (7).

Idem

(6) The media representatives who may be present at a hearing that is held in the absence of the public shall be chosen as follows:

1. The media representatives in attendance shall choose not more than two persons from among themselves.
2. Where the media representatives in attendance are unable to agree on a choice of persons, the court may choose not more than two media representatives who may be present at the hearing.
3. The court may permit additional media representatives to be present at the hearing.

Order  
excluding  
media repre-  
sentatives or  
prohibiting  
publication

(7) The court may make an order,

- (a) excluding a particular media representative from all or part of a hearing;
- (b) excluding all media representatives from all or a part of a hearing; or

- (c) prohibiting the publication of a report of the hearing or a specified part of the hearing,

where the court is of the opinion that the presence of the media representative or representatives or the publication of the report, as the case may be, would cause emotional harm to a child present at the hearing.

(8) No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding, or the child's parent or foster parent or a member of the child's family.

Prohibition:  
identifying  
child

(9) The court may make an order prohibiting the publication of information that has the effect of identifying a person charged with an offence under this Part.

Idem:  
order re  
adult

(10) No person except a party or a party's solicitor shall be given a copy of a transcript of the hearing, unless the court orders otherwise.

Transcript

**43.**—(1) As soon as practicable, but in any event within five days after a child is brought to a place of safety under section 41 or subsection 76 (6) or a homemaker remains or is placed on premises under subsection 75 (2),

Time of  
detention  
limited

- (a) the matter shall be brought before a court for a hearing under subsection 44 (1) to determine whether the child is in need of protection;
- (b) the child shall be returned to the person who last had charge of the child or, where there is an order for the child's custody that is enforceable in Ontario, to the person entitled to custody under the order; or
- (c) a temporary care agreement shall be made under subsection 30 (1) of Part II (Voluntary Access to Services).

(2) Within twenty-four hours after a child is brought to a place of safety that is a place of open temporary detention, or as soon thereafter as is practicable, the child shall be brought before the court, and the court shall,

Idem:  
place

- (a) where it is satisfied that no less restrictive course of action is feasible, order that the child remain in the place of open temporary detention for a period or periods not exceeding an aggregate of thirty days

and then be returned to the care and custody of the society;

- (b) order that the child be discharged from the place of open temporary detention and returned to the care and custody of the society; or
- (c) make an order under subsection 48 (2) (temporary care and custody).

Child  
protection  
hearing

**44.**—(1) Where a child is brought before the court to determine whether the child is in need of protection, the court shall hold a hearing to determine the issue and make an order under section 54.

Child's  
name, age,  
etc.

(2) As soon as practicable, and in any event before determining whether a child is in need of protection, the court shall determine,

- (a) the child's name and age;
- (b) the religious faith, if any, in which the child is being raised;
- (c) whether the child is an Indian or a native person and, if so, the child's band or native community; and
- (d) where the child was brought to a place of safety before the hearing, the location of the place from which the child was removed.

Where  
sixteenth  
birthday  
intervenes

(3) Despite anything else in this Part, where the child was under the age of sixteen years when the proceeding was commenced or when the child was apprehended, the court may hear and determine the matter and make an order under this Part as if the child were still under the age of sixteen years.

Place of  
hearing

**45.**—(1) A hearing under this Part with respect to a child shall be held in the county or district in which the child ordinarily resides, except that,

- (a) where the child is brought to a place of safety before the hearing, the hearing shall be held in the county or district in which the place from which the child was removed is located; and
- (b) where the child is the subject of an order for society supervision under subsection 54 (1) and an application is made under section 61 (status review), the



application may be heard in the county or district in which the parent or other person with whom the child is placed resides.

(2) Where the court is satisfied at any stage of a proceeding under this Part that there is a preponderance of convenience in favour of conducting it in another county or district, the court may order that the proceeding be transferred to that other county or district and be continued as if it had been commenced there.

Transfer of proceeding

(3) The court shall not make an order affecting a society that does not have jurisdiction in the county or district in which the court sits.

Orders affecting societies

**46.**—(1) In a proceeding under this Part, the court may inquire and satisfy itself as to all relevant matters.

Court may inquire, etc.

(2) The court may, on its own initiative, summon a person to attend before it, testify and produce any document or thing, and may enforce obedience to the summons as if it had been issued under the *Family Law Reform Act*.

Power of court

R.S.O. 1980, c. 152

**47.**—(1) Despite anything in the *Evidence Act*, before ordering that a child be placed in or returned to the care and custody of a person other than a society, the court may consider that person's past conduct toward any child that is or has been in his or her care, and any oral or written statement or report that the court considers relevant, including a transcript, exhibit or finding in an earlier civil or criminal proceeding, is admissible into evidence and shall be proved as the court directs.

Evidence at hearing: past conduct toward children

R.S.O. 1980, c. 145

(2) In a hearing under subsection 44 (1), evidence relating only to the disposition of the matter shall not be admitted before the court has determined that the child is in need of protection.

Idem: order of presentation

**48.**—(1) The court shall not adjourn a hearing for more than thirty days unless,

Adjournments

- (a) all the parties present and the person who will be caring for the child during the adjournment consent; and
- (b) the court is not aware that a party who is not present at the hearing objects to the longer adjournment.

Custody  
during  
adjournment

(2) Where a hearing is adjourned, the court shall make a temporary order for care and custody providing that the child,

- (a) remain in or be returned to the care and custody of the person who had charge of the child immediately before intervention under this Part;
- (b) remain in or be returned to the care and custody of the person referred to in clause (a), subject to the society's supervision and on such reasonable terms and conditions relating to the child's supervision as the court considers appropriate;
- (c) be placed in the care and custody of a person other than the person referred to in clause (a), with the consent of that other person, subject to the society's supervision and on such reasonable terms and conditions relating to the child's supervision as the court considers appropriate; or
- (d) remain or be placed in the care and custody of the society, but not be placed in,
  - (i) a place of secure custody as defined in Part IV (Young Offenders), or
  - (ii) a place of open temporary detention as defined in that Part that has not been designated as a place of safety.

Criteria

(3) The court shall not make an order under clause (2) (c) or (d) unless the court is satisfied that there are reasonable and probable grounds to believe that the child is in need of protection and cannot be protected adequately by an order under clause (2) (a) or (b).

Application  
of s. 59

(4) Where the court makes an order under clause (2) (d), section 59 (parental consents) applies with necessary modifications.

Access

(5) An order made under clause (2) (c) or (d) may contain provisions regarding any person's right of access to the child on such terms and conditions as the court considers appropriate.

Power to  
vary

(6) The court may at any time vary or terminate an order made under subsection (2).

Evidence on  
adjournments

(7) For the purpose of this section, the court may admit and act on any relevant testimony or document that is credible

and trustworthy, whether otherwise admissible or not, except testimony or a document that is inadmissible by reason of a privilege under the law of evidence or inadmissible by any statute.

**49.** Where a child is brought before the court to determine whether the child is in need of protection and the determination has not been made within three months after the commencement of the proceeding, the court,

Delay:  
court to  
fix date

- (a) shall by order fix a date for the hearing of the application, and the date may be the earliest date that is compatible with the just disposition of the application; and
- (b) may give such directions and make such orders with respect to the proceeding as are just.

**50.—**(1) Where the court makes an order under this Part, the court shall give, Reasons, etc.

- (a) a statement of any terms or conditions imposed on the order;
- (b) a statement of every plan for the child's care proposed to the court;
- (c) a statement of the plan for the child's care that the court is applying in its decision; and
- (d) reasons for its decision, including,
  - (i) a brief statement of the evidence on which the court bases its decision, and
  - (ii) where the order has the effect of removing or keeping the child from the care of the person who had charge of the child immediately before intervention under this Part, a statement of the reasons why the child cannot be adequately protected while in the person's care.

(2) Clause (1) (b) does not require the court to identify a person with whom or a place where it is proposed that a child be placed for care and supervision. Idem

## ASSESSMENTS

Order for  
assessment

**51.**—(1) Where a child has been found to be in need of protection, the court may order that within a specified time,

- (a) the child; or
- (b) a parent or a person, except a foster parent, in whose charge the child has been or may be,

attend before and undergo an assessment by a specified person who is qualified, in the court's opinion, to perform medical, emotional, developmental, psychological, educational or social assessments and has consented to perform the assessment.

Report

(2) The person performing an assessment under subsection (1) shall make a written report of the assessment to the court within the time specified in the order, which shall not be more than thirty days unless the court is of the opinion that a longer assessment period is necessary.

Copies of  
report

(3) At least seven days before the court considers the report at a hearing, the court or, where the assessment was requested by a party, that party, shall provide a copy of the report to,

- (a) the person assessed, subject to subsections (4) and (5);
- (b) the child's solicitor or agent of record;
- (c) a parent appearing at the hearing, or the parent's solicitor of record;
- (d) the society caring for or supervising the child;
- (e) a Director, where he or she requests a copy;
- (f) where the child is an Indian or a native person, a representative chosen by the child's band or native community; and
- (g) any other person who, in the opinion of the court, should receive a copy of the report for the purposes of the case.

Child under  
twelve

(4) Where the person assessed is a child less than twelve years of age, the child shall not receive a copy of the report



unless the court considers it desirable that the child receive a copy of the report.

(5) Where the person assessed is a child twelve years of age or more, the child shall receive a copy of the report, except that where the court is satisfied that disclosure of all or part of the report to the child would cause the child emotional harm, the court may withhold all or part of the report from the child. Child twelve or older

(6) The report of an assessment ordered under subsection (1) is evidence and is part of the court record of the proceeding. Assessment is evidence

(7) The court may draw any inference it considers reasonable from a person's refusal to undergo an assessment ordered under subsection (1). Inference from refusal

(8) The report of an assessment ordered under subsection (1) is not admissible into evidence in any other proceeding except, Report inadmissible: exceptions

(a) an appeal in the proceeding under section 66;

(b) a proceeding under the *Coroners Act*; or R.S.O. 1980, c. 93

(c) a proceeding referred to in section 78 (recovery on child's behalf),

without the consent of the person or persons assessed.

**52.** Where a child is brought before the court on consent as described in clause 38 (2) (1), the court shall, before making an order under section 54 that would remove the child from the parent's care and custody, Consent order: special requirements

(a) ask whether,

(i) the society has offered the parent and child services that would enable the child to remain with the parent, and

(ii) the parent and, where the child is twelve years of age or older, the child has consulted independent legal counsel in connection with the consent; and

(b) be satisfied that,

- (i) the parent and, where the child is twelve years of age or older, the child understands the nature and consequences of the consent,
- (ii) every consent is voluntary, and
- (iii) the parent and, where the child is twelve years of age or older, the child consents to the order being sought.

Society's  
plan for  
child

**53.** The court shall, before making an order under section 54 or 62, obtain and consider a plan for the child's care prepared in writing by the society and including,

- (a) a description of the services to be provided to remedy the condition or situation on the basis of which the child was found to be in need of protection;
- (b) a statement of the criteria by which the society will determine when its wardship or supervision is no longer required;
- (c) an estimate of the time required to achieve the purpose of the society's intervention;
- (d) where the society proposes to remove or has removed the child from a person's care,
  - (i) an explanation of why the child cannot be adequately protected while in the person's care, and a description of any past efforts to do so, and
  - (ii) a statement of what efforts, if any, are planned to maintain the child's contact with the person; and
- (e) where the society proposes to remove or has removed the child from a person's care permanently, a description of the arrangements made or being made for the child's long-term stable placement.

Order where  
child in need  
of protection

**54.—(1)** Where the court finds that a child is in need of protection and is satisfied that intervention through a court order is necessary to protect the child in the future, the court shall make one of the following orders, in the child's best interests:

Supervision  
order

1. That the child be placed with or returned to a parent or another person, subject to the supervision of

the society, for a specified period of at least three and not more than twelve months.

2.

That the child be made a ward of the society and be placed in its care and custody for a specified period not exceeding twelve months.

Society  
wardship
3.

That the child be made a ward of the Crown, until the wardship is terminated under section 62 or expires under subsection 68 (1), and be placed in the care of the society.

Crown  
wardship
4.

That the child be made a ward of the society under paragraph 2 for a specified period and then be returned to a parent or another person under paragraph 1, for a period or periods not exceeding an aggregate of twelve months.

Consecutive  
orders of  
society  
wardship and  
supervision

(2) In determining which order to make under subsection (1), the court shall ask the parties what efforts the society or another agency or person made to assist the child before intervention under this Part.

Court to  
inquire

(3) The court shall not make an order removing the child from the care of the person who had charge of him or her immediately before intervention under this Part unless the court is satisfied that less restrictive alternatives, including non-residential services and the assistance referred to in subsection (2),

Less  
restrictive  
alternatives  
preferred

- (a) have been attempted and have failed;
- (b) have been refused by the person having charge of the child; or
- (c) would be inadequate to protect the child.

(4) Where the court decides that it is necessary to remove the child from the care of the person who had charge of him or her immediately before intervention under this Part, the court shall, before making an order for society or Crown wardship under paragraph 2 or 3 of subsection (1), consider whether it is possible to place the child with a relative, neighbour or other member of the child's community under paragraph 1 of subsection (1) with the consent of the relative or other person.

Community  
placement  
to be  
considered

(5) Where the child referred to in subsection (4) is an Indian or a native person, the court shall consider whether it is possible to place the child with,

Idem:  
where child  
an Indian or  
a native  
person

- (a) a member of the child's extended family;
- (b) a member of the child's band or native community;  
or
- (c) another Indian or native family.

Crown  
wardship  
order  
restricted

(6) The court shall not make an order for Crown wardship under paragraph 3 of subsection (1) unless the court is satisfied that the circumstances justifying the order are unlikely to change within a reasonably foreseeable time not exceeding twenty-four months so that the child can be returned to the care of the person who had charge of him or her immediately before intervention under this Part.

Idem

(7) When the court has dispensed with notice to a person under subsection 40 (7), the court shall not make an order for Crown wardship under paragraph 3 of subsection (1), or an order for society wardship under paragraph 2 of subsection (1) for a period exceeding thirty days, until a further hearing under subsection 44 (1) has been held upon notice to that person.

Terms and  
conditions of  
supervision  
order

(8) Where the court makes a supervision order under paragraph 1 of subsection (1), the court may impose reasonable terms and conditions relating to the child's care and supervision on,

- (a) the person with whom the child is placed or to whom the child is returned;
- (b) the supervising society;
- (c) the child; and
- (d) any other person who participated in the hearing.

Where no  
court order  
necessary

(9) Where the court finds that a child is in need of protection but is not satisfied that a court order is necessary to protect the child in the future, the court shall order that the child remain with or be returned to the person who had charge of the child immediately before intervention under this Part.

#### ACCESS

Access order

**55.—**(1) The court may, in the child's best interests,

- (a) when making an order under this Part; or
- (b) upon an application under subsection (2),



make, vary or terminate an order respecting a person's access to the child or the child's access to a person, and may impose such terms and conditions on the order as the court considers appropriate.

(2) Where a child is in a society's care and custody or supervision, Who may apply

- (a) the child;
- (b) any other person, including, where the child is an Indian or a native person, a representative chosen by the child's band or native community; or
- (c) the society,

may apply to the court at any time for an order under subsection (1).

(3) An applicant referred to in clause (2) (b) shall give notice of the application to the society. Notice

(4) A society making or receiving an application under subsection (2) shall give notice of the application to, Idem

- (a) the child, subject to subsections 40 (4) and (5) (notice to child);
- (b) the child's parent;
- (c) the person caring for the child at the time of the application; and
- (d) where the child is an Indian or a native person, a representative chosen by the child's band or native community.

(5) No order respecting access to a person sixteen years of age or more shall be made under subsection (1) without the person's consent. Child over sixteen

(6) No application shall be made under subsection (2) by a person other than a society within six months of, Six month period

- (a) the making of an order under section 54;
- (b) the disposition of a previous application by the same person under subsection (2);

- (c) the disposition of an application under section 61 (review); or
- (d) the final disposition or abandonment of an appeal from an order referred to in clause (a), (b) or (c),

whichever is later.

No  
application  
where child  
placed for  
adoption

(7) No person or society shall make an application under subsection (2) where the child,

- (a) is a Crown ward;
- (b) has been placed in a person's home by the society or by a Director for the purpose of adoption under Part VII (Adoption); and
- (c) still resides in that person's home.

Access:  
where child  
removed  
from person  
in charge

**56.**—(1) Where an order is made under paragraph 1 or 2 of subsection 54 (1) removing a child from the person who had charge of the child immediately before intervention under this Part, the court shall make an order for access by the person unless the court is satisfied that continued contact with him or her would not be in the child's best interests.

Idem:  
Crown ward

(2) Where a child is made a Crown ward under paragraph 3 of subsection 54 (1), the court shall not make an order for access by the person who had charge of the child immediately before intervention under this Part unless the court is satisfied that,

- (a) permanent placement in a family setting has not been planned or is not possible, and the person's access will not impair the child's future opportunities for such placement;
- (b) the child is at least twelve years of age and wishes to maintain contact with the person;
- (c) the child has been or will be placed with a person who does not wish to adopt the child; or
- (d) some other special circumstance justifies making an order for access.

Termination  
of access to  
Crown ward

(3) The court shall not terminate an order for access to a Crown ward unless the court is satisfied that the circumstances

that justified the making of the order under subsection (2) no longer exist.

PAYMENT ORDERS

- 57.—**(1) Where the court places a child in the care of,

  - (a) a society; or
  - (b) a person other than the child’s parent, subject to a society’s supervision,

Order for  
payment by  
parent

the court may order a parent or a parent’s estate to pay the society a specified amount at specified intervals for each day the child is in the society’s care or supervision.

(2) In making an order under subsection (1), the court shall consider those of the following circumstances of the case that the court considers relevant: Criteria

1. The assets and means of the child and of the parent or the parent’s estate.
2. The child’s capacity to provide for his or her own support.
3. The capacity of the parent or the parent’s estate to provide support.
4. The child’s and the parent’s age and physical and mental health.
5. The child’s mental, emotional and physical needs.
6. Any legal obligation of the parent or the parent’s estate to provide support for another person.
7. The child’s aptitude for and reasonable prospects of obtaining an education.
8. Any legal right of the child to support from another source, other than out of public moneys.

(3) No order made under subsection (1) shall extend beyond the day on which the child attains the age of eighteen years. Order ends  
at eighteen

- Power to vary (4) The court may vary, suspend or terminate an order made under subsection (1) where the court is satisfied that the circumstances of the child or parent have changed.
- Collection by municipality (5) The council of a municipality may enter into an agreement with the board of directors of a society providing for the collection by the municipality, on the society's behalf, of the amounts ordered to be paid by a parent under subsection (1).
- Enforcement R.S.O. 1980, c. 152 (6) An order made against a parent under subsection (1) may be enforced under sections 27 to 32 of the *Family Law Reform Act* as if it were an order for support.

#### SOCIETY AND CROWN WARDSHIP

- Application **58.**—(1) This section applies where a child is made a society or Crown ward under paragraph 2 or 3 of subsection 54 (1).
- Placement (2) The society having care of a child shall choose a residential placement for the child that,
- (a) represents the least restrictive alternative for the child;
  - (b) where possible, respects the religious faith, if any, in which the child is being raised;
  - (c) where possible, respects the child's linguistic and cultural heritage;
  - (d) where the child is an Indian or a native person, is with a member of the child's extended family, a member of the child's band or native community or another Indian or native family, if possible; and
  - (e) takes into account the child's wishes, if they can be reasonably ascertained, and the wishes of any parent who is entitled to access to the child.
- Education (3) The society having care of a child shall ensure that the child receives an education that corresponds to his or her aptitudes and abilities.
- Placement outside or removal from Ontario (4) The society having care of a child shall not place the child outside Ontario or permit a person to remove the child from Ontario permanently unless a Director is satisfied that extraordinary circumstances justify the placement or removal.
- Rights of child, parent and foster parent (5) The society having care of a child shall ensure that,



- (a) the child is afforded all the rights referred to in Part V (Rights of Children); and
- (b) the wishes of any parent who is entitled to access to the child and, where the child is a Crown ward, of any foster parent with whom the child has lived continuously for two years are taken into account in the society's major decisions concerning the child.

(6) The society having care of a child may remove the child from a foster home or other residential placement where, in the opinion of a Director or local director, it is in the child's best interests to do so.

Change of placement

(7) Where a child is a Crown ward and has lived with a foster parent continuously for two years, the society shall give the foster parent ten days notice before removing the child under subsection (6).

Notice to foster parent in certain cases

(8) Where a society removes a child from a person under subsection (6), it shall advise the person of his or her right to a review under section 65.

Right to review

(9) Sections 35, 36 and 37 (review by Residential Placement Advisory Committee, further review by Children's Services Review Board) of Part II (Voluntary Access to Services) apply to a residential placement made by a society.

Review of certain placements

**59.**—(1) Where a child is made a society ward under paragraph 2 of subsection 54 (1), the society may consent to and authorize medical treatment for the child where a parent's consent would otherwise be required, unless the court orders that the parent shall retain any right that he or she may have to give or refuse consent to medical treatment for the child.

Society ward: consent to medical treatment

(2) The court shall not make an order under subsection (1) where failure to consent to necessary medical treatment was a ground for finding that the child was in need of protection.

Idem

(3) Where a parent referred to in an order made under subsection (1) refuses or is unavailable or unable to consent to medical treatment for the child and the court is satisfied that the treatment would be in the child's best interests, the court may authorize the society to consent to the treatment.

Court order

(4) Where a child is made a society ward under paragraph 2 of subsection 54 (1), the child's parent retains any right that he or she may have under the *Marriage Act* to give or refuse consent to the child's marriage.

Consent to child's marriage  
R.S.O. 1980, c. 256

Crown  
custodian  
of Crown  
wards

**60.**—(1) Where a child is made a Crown ward under paragraph 3 of subsection 54 (1), the Crown has the rights and responsibilities of a parent for the purpose of the child's care, custody and control and has the right to give or refuse consent to medical treatment for the child where a parent's consent would otherwise be required, and the Crown's powers, duties and obligations in respect of the child, except those assigned to a Director by this Act or the regulations, shall be exercised and performed by the society caring for the child.

Society  
custodian of  
society wards

(2) Where a child is made a society ward under paragraph 2 of subsection 54 (1), the society has the rights and responsibilities of a parent for the purpose of the child's care, custody and control.

#### REVIEW

Application

**61.**—(1) This section applies where a child is the subject of an order for society supervision, society wardship or Crown wardship under subsection 54 (1).

Society to  
seek status  
review

(2) The society having care, custody or supervision of a child,

- (a) may apply to the court at any time, subject to subsection (7);
- (b) where the order is for society supervision or society wardship, shall apply to the court before the expiry of the order, except under subsection 68 (1) (age of eighteen); and
- (c) where the society has removed the child from the care of a person with whom the child was placed under an order for society supervision, shall apply to the court within five days of the child's removal,

for review of the child's status.

Application  
of  
subs. (2)  
(a, c)

(3) Where a child is the subject of an order for society supervision under subsection 54 (1), clauses (2) (a) and (c) also apply to the society that has jurisdiction in the county or district in which the parent or other person with whom the child is placed resides.

Others may  
seek status  
review

(4) An application for review of a child's status may be made on notice to the society by,

- (a) the child, where the child is at least twelve years of age;

- (b) any parent of the child, subject to subsection (5);
- (c) the person with whom the child was placed under an order for society supervision; or
- (d) where the child is an Indian or a native person, a representative chosen by the child's band or native community.

(5) Where the child is a Crown ward and has lived with the same foster parent continuously during the two years immediately before the application, an application under subsection (4) shall not be made by any parent of the child without the court's leave. Leave required in certain cases

(6) A society making an application under subsection (2) or receiving notice of an application under subsection (4) shall give notice of the application to, Notice

- (a) the child, subject to subsections 40 (4) and (5) (notice to child);
- (b) the child's parent, unless the child is a Crown ward and is sixteen years of age or older;
- (c) the person with whom the child was placed under an order for society supervision;
- (d) a foster parent who has cared for the child continuously during the six months immediately before the application;
- (e) where the child is an Indian or a native person, a representative chosen by the child's band or native community; and
- (f) a Director, if the child is a Crown ward.

(7) No application shall be made under subsection (4) within six months of, Six month period

- (a) the making of the original order under subsection 54 (1);
- (b) the disposition of a previous application by any person under subsection (4); or
- (c) the final disposition or abandonment of an appeal from an order referred to in clause (a) or (b),

whichever is the latest.

Exception

(8) Subsection (7) does not apply where,

- (a) the child is a society ward or the subject of an order for society supervision, or the child is a Crown ward and an order for access has been made under subsection 56 (2); and
- (b) the court is satisfied that a major element of the plan for the child's care that the court applied in its decision is not being carried out.

No review  
where child  
placed for  
adoption

(9) No person or society shall make an application under this section where the child,

- (a) is a Crown ward;
- (b) has been placed in a person's home by the society or by a Director for the purpose of adoption under Part VII; and
- (c) still resides in that person's home.

Interim care  
and custody

(10) Where an application is made under this section, the child shall remain in the care and custody of the person or society having charge of the child, until the application is disposed of, unless the court is satisfied that the child's best interests require a change in the child's care and custody.

Court may  
vary, etc.

**62.**—(1) Where an application for review of a child's status is made under section 61, the court may, in the child's best interests,

- (a) vary or terminate the original order made under subsection 54 (1), including a term or condition or a provision for access that is part of the order;
- (b) order that the original order terminate on a specified future date; or
- (c) make a further order or orders under section 54.

Restriction

(2) Where a child has been made a Crown ward under paragraph 3 of subsection 54 (1), the court shall not make an order for society wardship under subsection (1).

Criteria

(3) Before making an order under subsection (1), the court shall consider,



- (a) whether the grounds on which the original order was made still exist;
- (b) whether the plan for the child's care that the court applied in its decision is being carried out;
- (c) what services have been provided or offered under this Act to the person who had charge of the child immediately before intervention under this Part;
- (d) whether the person is satisfied with those services;
- (e) whether the society is satisfied that the person has co-operated with the society and with any person or agency providing services;
- (f) whether the person or the child requires further services;
- (g) whether, where immediate termination of an order has been applied for but is not appropriate, a future date for termination of the order can be estimated; and
- (h) what is the least restrictive alternative that is in the child's best interests.

**63.**—(1) A Director or a person authorized by a Director shall, at least once during each calendar year, review the status of every child, Director's annual review of Crown wards

- (a) who is a Crown ward;
- (b) who was a Crown ward throughout the immediately preceding twenty-four months; and
- (c) whose status has not been reviewed under this section or under section 62 during that time.

(2) After a review under subsection (1), the Director may Idem direct the society to make an application for review of the child's status under subsection 61 (2) or give any other direction that, in the Director's opinion, is in the child's best interests.

**64.**—(1) The Minister may appoint a judge of the District Court to investigate a matter relating to, Investigation by judge

- (a) a child in a society's care; or

(b) the proper administration of this Part,

and the judge shall conduct the investigation and make a written report to the Minister.

Powers of  
judge

R.S.O. 1980,  
c. 411

(2) For the purposes of an investigation under subsection (1), the judge has the powers of a commission under Part II of the *Public Inquiries Act*, and that Part applies to the investigation as if it were an inquiry under that Act.

Society  
review  
procedure

**65.**—(1) A society shall establish a written review procedure, which shall be approved by a Director, for hearing and dealing with complaints by any person regarding services sought or received from the society, and shall make the review procedure available to any person on request.

Idem

(2) A review procedure established under subsection (1), shall include an opportunity for the person making the complaint to be heard by the society's board of directors.

Further  
review by  
Director

(3) A person who makes a complaint and is not satisfied with the response of the society's board of directors may have the matter reviewed by a Director.

#### APPEALS

Appeal

**66.**—(1) An appeal from a court's order under this Part may be made to the District Court by,

- (a) the child;
- (b) any parent of the child;
- (c) the person who had charge of the child immediately before intervention under this Part;
- (d) a Director or local director; or
- (e) where the child is an Indian or a native person, a representative chosen by the child's band or native community.

Exception

(2) Subsection (1) does not apply to an order for an assessment under section 51.

Care and  
custody  
pending  
appeal

(3) Where a decision regarding the care and custody of a child is appealed under subsection (1), execution of the decision shall be stayed for the ten days immediately following service of the notice of appeal on the court that made the decision, and where the child is in the society's custody at the

time the decision is made, the child shall remain in the care and custody of the society until,

- (a) the ten day period of the stay has expired; or
- (b) an order is made under subsection (4),

whichever is earlier.

(4) The District Court may, in the child's best interests, make a temporary order for the child's care and custody pending final disposition of the appeal, except an order placing the child in a place of secure custody as defined in Part IV (Young Offenders) or a place of secure temporary detention as defined in that Part that has not been designated as a place of safety, and the District Court may, on any party's motion before the final disposition of the appeal, vary or terminate the order or make a further order.

Temporary order

(5) No extension of the time for an appeal shall be granted where the child has been placed for adoption under Part VII (Adoption).

No extension where child placed for adoption

(6) The District Court may receive further evidence relating to events both before and after the appealed decision.

Further evidence

(7) An appeal under this section shall be heard in the county or district in which the order appealed from was made.

Place of hearing

(8) Section 42 (hearings private, etc.) applies with necessary modifications to an appeal under this section.

s. 42 applies

#### EXPIRY OF ORDERS

**67.**—(1) Subject to subsection (3), the court shall not make an order under this Part that results in a child being a society ward for a continuous period exceeding twenty-four months.

Twenty-four month rule

(2) In the calculation of the twenty-four month period referred to in subsection (1), time during which a child is in a society's care,

Idem

- (a) under an agreement made under subsection 30 (1) or 31 (1) (temporary care or special needs agreement) of Part II (Voluntary Access to Services); or
- (b) under a temporary order made under clause 48 (2) (d),

shall be counted.

Idem

(3) Where the twenty-four month period referred to in subsection (1) expires and,

- (a) an appeal of an order made under subsection 54 (1) has been commenced and is not yet finally disposed of; or
- (b) the court has adjourned a hearing under section 62 (status review),

the period shall be deemed to be extended until the appeal has been finally disposed of or an order made under section 62, as the case may be.

Expiry of orders

**68.**—(1) An order under this Part expires when the child who is the subject of the order,

- (a) attains the age of eighteen years; or
- (b) marries,

whichever comes first.

Crown ward: continuing care

(2) Where an order for Crown wardship expires under subsection (1), the society may, with a Director's approval, continue to provide care and maintenance for the former Crown ward in accordance with the regulations.

#### DUTY TO REPORT

Interpretation

**69.**—(1) In this section and in sections 70 and 71, "to suffer abuse", when used in reference to a child, means to be in need of protection within the meaning of clause 38 (2) (a), (c), (e), (f) or (h).

Duty to report that child in need of protection

(2) A person who believes on reasonable grounds that a child is or may be in need of protection shall forthwith report the belief and the information upon which it is based to a society.

Idem: professional or official duties, suspicion of abuse

(3) Despite the provisions of any other Act, a person referred to in subsection (4) who, in the course of his or her professional or official duties, has reasonable grounds to suspect that a child is or may be suffering or may have suffered abuse shall forthwith report the suspicion and the information on which it is based to a society.



(4) Subsection (3) applies to every person who performs professional or official duties with respect to a child, including,

Application of subs. (3)

- (a) a health care professional, including a physician, nurse, dentist, pharmacist and psychologist;
- (b) a teacher, school principal, social worker, family counsellor, priest, rabbi, clergyman, operator or employee of a day nursery and youth and recreation worker;
- (c) a peace officer and a coroner;
- (d) a solicitor; and
- (e) a service provider and an employee of a service provider.

(5) A society that obtains information that a child in its care and custody is or may be suffering or may have suffered abuse shall forthwith report the information to a Director.

Duty of society

(6) This section applies although the information reported may be confidential or privileged, and no action for making the report shall be instituted against a person who acts in accordance with subsection (2) or (3) unless the person acts maliciously or without reasonable grounds for the belief or suspicion, as the case may be.

Section overrides privilege

(7) Nothing in this section abrogates any privilege that may exist between a solicitor and his or her client.

Exception: solicitor client privilege

REVIEW TEAMS

**70.**—(1) In this section, “review team” means a team established for a society under subsection (2).

Interpretation

- (2) The Minister may establish a review team that includes,
- Review teams
- (a) persons who are professionally qualified to perform medical, psychological, developmental, educational or social assessments; and
  - (b) at least one legally qualified medical practitioner,

for a society.

Duty of  
team

(3) Whenever a society refers the case of a child who may be suffering or may have suffered abuse to its review team, the review team shall,

- (a) review the case; and
- (b) recommend to the society how the child may be protected.

Disclosure to  
team  
permitted

(4) Despite the provisions of any other Act, a person may disclose to a review team or to any of its members information reasonably required for a review under subsection (3).

Subsection  
overrides  
privilege

(5) Subsection (4) applies although the information disclosed may be confidential or privileged and no action for disclosing the information shall be instituted against a person who acts in accordance with subsection (4), unless the person acts maliciously or without reasonable grounds.

Where child  
not to be  
returned  
without  
review

(6) Where a society with a review team has information that a child in its care may have suffered abuse, the society shall not return the child to the care of the person who had charge of the child at the time of the possible abuse until the society has,

- (a) referred the case to the review team; and
- (b) obtained and considered the review team's recommendations.

#### COURT-ORDERED ACCESS TO RECORDS

Interpretation

**71.—**(1) In this section, “record” means recorded information, regardless of physical form or characteristics.

Motion  
for order

(2) A Director or society may make a motion at any time for an order under subsection (3) for the production of a record or part of a record, on notice to the person in possession or control of the record.

Order for  
production

- (3) Where the court is satisfied that,
- (a) a record contains information that may be relevant to a consideration of whether a child is suffering abuse or is likely to suffer abuse; and
  - (b) the person in possession or control of the record has refused to permit the Director or local director to inspect it,

the court may order that the person produce the record or a specified part of the record for inspection and copying by the Director or local director or a person authorized by one of them or by the court.

(4) In considering whether to make an order under subsection (3), the court may examine the record.

Court may  
examine  
record

(5) No person who obtains information by means of an order made under subsection (3) shall disclose the information except,

Information  
confidential

(a) as specified in the order; and

(b) in testimony in a proceeding under this Part.

(6) Subject to subsection (7), this section applies despite any other Act, but nothing in this section abrogates any privilege that may exist between a solicitor and his or her client.

Application:  
solicitor  
client  
privilege  
excepted

(7) Where an application under subsection (2) concerns a record that is a clinical record within the meaning of section 29 of the *Mental Health Act*, subsection 29 (6) (attending physician's statement, hearing) of that Act applies and the court shall give equal consideration to,

Matters  
to be  
considered  
by court  
R.S.O. 1980,  
c. 262

(a) the matters to be considered under subsection 29 (7) of that Act; and

(b) the need to protect the child's health and safety.

#### CHILD ABUSE REGISTER

**72.—**(1) In this section and in section 73,

Interpretation

(a) "Director" means the person appointed under subsection (2);

(b) "register" means the register maintained under subsection (5);

(c) "registered person" means a person identified in the register, but does not include,

(i) a person who reports to a society under subsection 69 (2) or (3) and is not the subject of the report, or

(ii) the child who is the subject of a report.

Director (2) The Minister may appoint an employee of the Ministry as Director for the purposes of this section.

Society to report to Director (3) A society that receives information under section 69 concerning a child, including a child in the society's care, shall forthwith,

(a) verify the information in the manner determined by the Director; and

(b) if the information is verified, report it to the Director in the prescribed form.

Protection from liability (4) No action or other proceeding for damages shall be instituted against an officer or employee of a society, acting in good faith, for an act done in the execution or intended execution of the duty imposed on the society by subsection (3) or for an alleged neglect or default of that duty.

Child abuse register (5) The Director shall maintain a register in the manner prescribed by the regulations for the purpose of recording information reported to the Director under clause (3) (b), but the register shall not contain information that has the effect of identifying a person who reports to a society under subsection 69 (2) or (3) and is not the subject of the report.

Register confidential (6) Despite the provisions of any other Act, no person shall inspect, remove, alter or permit the inspection, removal or alteration of information maintained in the register, or disclose or permit the disclosure of information that the person obtained from the register, except as this section authorizes.

Coroner's inquest, etc. (7) A person who is,

(a) a coroner, or a legally qualified medical practitioner or peace officer authorized in writing by a coroner, acting in connection with an investigation or inquest under the *Coroners Act*; or

R.S.O. 1980,  
c. 93

(b) the Official Guardian or the Official Guardian's authorized agent,

may inspect, remove and disclose information in the register in accordance with his or her authority.

Minister or Director may permit access to register (8) The Minister or the Director may permit,

(a) a person who is employed by,



- (i) the Ministry,
- (ii) a society, or
- (iii) a recognized child protection agency outside Ontario; or

- (b) a person who is providing or proposes to provide counselling or treatment to a registered person,

to inspect and remove information in the register and to disclose the information to a person referred to in subsection (7) or to another person referred to in this subsection, subject to such terms and conditions as the Director may impose.

- (9) The Minister or the Director may disclose information in the register to a person referred to in subsection (7) or (8). Director may disclose information

- (10) A person who is engaged in research may, with the Director's written approval, inspect and use the information in the register, but shall not, Research

- (a) use or communicate the information for any purpose except research, academic pursuits or the compilation of statistical data; or
  - (b) communicate any information that may have the effect of identifying a person named in the register.

- (11) A child, a registered person or the child's or registered person's solicitor or agent may inspect only the information in the register that refers to the child or registered person. Registered person

- (12) A legally qualified medical practitioner may, with the Director's written approval, inspect the information in the register that is specified by the Director. Physician

- (13) The Director or an employee of the Ministry acting under the Director's authority, Amendment of register

- (a) shall remove a name from or otherwise amend the register where the regulations require the removal or amendment; and
  - (b) may amend the register to correct an error.

- (14) The register shall not be admitted into evidence in a proceeding except, Register inadmissible: exceptions

- (a) to prove compliance or non-compliance with this section;
- (b) in a hearing or appeal under section 73;
- (c) in a proceeding under the *Coroners Act*; or
- (d) in a proceeding referred to in section 78 (recovery on child's behalf).

R.S.O. 1980,  
c. 93

Interpretation

**73.**—(1) In this section, “hearing” means a hearing held under clause (4) (b).

Notice to  
registered  
person

(2) Where an entry is made in the register, the Director shall forthwith give written notice to each registered person referred to in the entry indicating that,

- (a) the person is identified in the register;
- (b) the person or the person's solicitor or agent is entitled to inspect the information in the register that refers to or identifies the person; and
- (c) the person is entitled to request that the Director remove the person's name from or otherwise amend the register.

Request to  
amend  
register

(3) A registered person who receives notice under subsection (2) may request that the Director remove the person's name from or otherwise amend the register.

Director's  
response

(4) On receiving a request under subsection (3), the Director may,

- (a) grant the request; or
- (b) hold a hearing, on ten days written notice to the parties, to determine whether to grant or refuse the request.

Delegation

(5) The Director may authorize another person to hold a hearing and exercise the Director's powers and duties under subsection (8).

R.S.O. 1980,  
c. 484 applies

(6) The *Statutory Powers Procedure Act* applies to a hearing.

Hearing

- (7) The parties to a hearing are,
  - (a) the registered person;

- (b) the society that received the information referring to or identifying the registered person; and
- (c) any other person specified by the Director.

(8) Where the Director determines, after holding a hearing, that the information in the register with respect to a registered person is in error or should not be in the register, the Director shall remove the registered person's name from or otherwise amend the register, and may order that the society's records be amended to reflect the Director's decision.

Director's  
decision

(9) A party to a hearing may appeal the Director's decision to the Divisional Court.

Appeal to  
Divisional  
Court

(10) A hearing or appeal under this section shall be held in the absence of the public and no media representative shall be permitted to attend.

Hearing  
private

(11) No person shall publish or make public information that has the effect of identifying a witness at or a participant in a hearing, or a party to a hearing other than a society.

Publication

(12) The record of a hearing or appeal under this section shall not be admitted into evidence in any other proceeding except a proceeding under clause 82 (1) (d) (confidentiality of register) or clause 82 (1) (e) (amendment of society's records).

Record  
inadmissible:  
exception

#### POWERS OF DIRECTOR

**74.—**(1) A Director may direct, in the best interests of a child in the care or supervision of a society, that the child,

Director's  
power to  
transfer

- (a) be transferred to the care or supervision of another society; or
- (b) be transferred from one placement to another placement designated by the Director.

(2) In determining whether to direct a transfer under clause (1) (b), the Director shall take into account,

Criteria

- (a) the length of time the child has spent in the existing placement;
- (b) the views of the foster parents; and
- (c) the views and preferences of the child, where they are reasonably ascertainable.

## HOMEMAKERS

Interpretation **75.**—(1) In this section, “homemaker” means a person who is approved by a Director or local director for the purposes of this section.

Homemaker may remain on premises (2) Where it appears to a person entering premises under section 41 that,

- (a) a child who in the person’s opinion is unable to care for himself or herself has been left on the premises without competent care or supervision; and
- (b) no person having charge of the child is available or able to consent to the placement of a homemaker on the premises,

the person may, instead of taking the child to a place of safety,

- (c) remain on the premises; or
- (d) arrange with a society for the placement of a homemaker on the premises.

Homemaker’s authority (3) A homemaker remaining or placed on premises under subsection (2) may enter and live on the premises, carry on normal housekeeping activities that are reasonably necessary for the child’s care and exercise reasonable control and discipline over the child.

Notice to person having charge of child (4) Where a homemaker remains or is placed on premises under subsection (2), the society shall forthwith notify or make reasonable efforts to notify the person last having charge of the child that a homemaker has been placed on the premises.

Court order, etc. (5) Where a child with whom a homemaker has been placed under subsection (2),

- (a) is found not to be in need of protection, the homemaker shall leave the premises; or
- (b) is found to be in need of protection, the court may authorize the homemaker to remain on the premises until,
  - (i) a specified day not more than thirty days from the date of the order, or



- (ii) a person who is entitled to custody of the child returns to care for the child,

whichever is sooner.

(6) Where no person returns to care for the child before the day specified in an order under clause (5) (b), the court may, Extension

- (a) extend the order; or
- (b) hold a further hearing under section 44 and make an order under section 54.

OFFENCES, RESTRAINING ORDERS, RECOVERY ON CHILD'S BEHALF

**76.**—(1) In this section, “abuse” means a state or condition of being physically harmed, sexually molested or sexually exploited. Interpretation

(2) No person having charge of a child shall, Child abuse

- (a) inflict abuse on the child; or
- (b) by failing to care and provide for or supervise and protect the child adequately,
  - (i) permit the child to suffer abuse, or
  - (ii) permit the child to suffer from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development.

(3) No person having charge of a child less than sixteen years of age shall leave the child without making provision for his or her supervision and care that is reasonable in the circumstances. Leaving child unattended

(4) Where a person is charged with contravening subsection (3) and the child is less than ten years of age, the onus of establishing that the person made provision for the child's supervision and care that was reasonable in the circumstances rests with the person. Reverse onus

(5) No person having charge of a child less than sixteen years of age shall permit the child to, Allowing child to loiter, etc.

- (a) loiter in a public place; or

- (b) be in a place of public entertainment, unless accompanied by the person or by an individual eighteen years of age or older who is appointed by the person,

between the hours of midnight and 6 a.m.

Police may  
take child  
home or to  
place of  
safety

(6) Where a child who is actually or apparently less than sixteen years of age is in a place to which the public has access, unaccompanied by a responsible adult, between the hours of midnight and 6 a.m., a peace officer may apprehend the child without a warrant and proceed as if the child had been apprehended under subsection 41 (10) (child under twelve).

Child  
protection  
hearing

(7) The court may, in connection with a case arising under subsection (1), (2) or (5), proceed under this Part as if the child had been brought before the court to determine whether the child is in need of protection.

Restraining  
order

**77.**—(1) Where the court finds that a child is in need of protection, the court may, instead of or in addition to making an order under subsection 54 (1), make an order in the child's best interests restraining or prohibiting a person's access to or contact with the child, and may include in the order such directions as the court considers appropriate for implementing the order and protecting the child.

Idem: notice

(2) An order shall not be made under subsection (1) unless notice of the proceeding has been served personally on the person to be named in the order.

Six month  
maximum

(3) An order made under subsection (1) shall be in force for a specified period not exceeding six months.

Extension,  
variation and  
termination

(4) An application for the extension, variation or termination of an order made under subsection (1) may be made by,

- (a) the person who is the subject of the order;
- (b) the child;
- (c) the person having charge of the child;
- (d) a society;
- (e) a Director; or

- (f) where the child is an Indian or a native person, a representative chosen by the child's band or native community.

(5) Where an application is made under subsection (4), the court may, in the child's best interests, Idem

- (a) extend the order for a further period or periods of six months; or
- (b) vary or terminate the order.

(6) Where a society has care of a child and an order made under subsection (1) prohibiting a person's access to the child is in force, the society shall not return the child to the care of, Child in society's care not to be returned while order in force

- (a) the person named in the order; or
- (b) a person who may permit that person to have access to the child.

**78.**—(1) In this section, “to suffer abuse”, when used in reference to a child, means to be in need of protection within the meaning of clause 38 (2) (a), (c), (e), (f) or (h). Interpretation

(2) When the Official Guardian is of the opinion that a child has a cause of action or other claim because the child has suffered abuse, the Official Guardian may, if he or she considers it to be in the child's best interests, institute and conduct proceedings on the child's behalf for the recovery of damages or other compensation. Recovery on child's behalf

(3) Where a child is in a society's care and custody, subsection (2) also applies to the society with necessary modifications. Idem: society

**79.** No person shall place a child in the care and custody of a society, and no society shall take a child into its care and custody, except, Prohibition

- (a) in accordance with this Part; or
- (b) under an agreement made under subsection 30 (1) or 31 (1) (temporary care or special needs agreement) of Part II (Voluntary Access to Services).

**80.** Where a child is the subject of an order for society supervision, society wardship or Crown wardship under subsection 54 (1), no person shall, Offence

- (a) induce or attempt to induce the child to leave the care of the person with whom the child is placed by the court or by the society, as the case may be;
- (b) detain or harbour the child after the person or society referred to in clause (a) requires that the child be returned;
- (c) interfere with the child or remove or attempt to remove the child from any place; or
- (d) for the purpose of interfering with the child, visit or communicate with the person referred to in clause (a).

## Offence

**81.** No person shall,

- (a) knowingly give false information in an application under this Part; or
- (b) obstruct, interfere with or attempt to obstruct or interfere with a child protection worker who is acting under section 41.

## Offences

**82.—**(1) A person who contravenes,

- (a) an order for access made under subsection 55 (1);
- (b) subsection 69 (3) (reporting child abuse);
- (c) subsection 71 (5) (disclosure of information obtained by court order);
- (d) subsection 72 (6) or (10) (confidentiality of child abuse register);
- (e) an order made under subsection 73 (9) (amendment of society's records);
- (f) subsection 76 (3) or (5) (leaving child unattended, etc.);
- (g) a restraining order made under subsection 77 (1);
- (h) section 79 (unauthorized placement);
- (i) any provision of section 80 (interference with child, etc.); or
- (j) clause 81 (a) or (b),



and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation is guilty of an offence and on conviction is liable to a fine of not more than \$1,000 or, except in the case of a contravention of subsection 69 (3), to imprisonment for a term of not more than one year, or to both.

(2) A person who contravenes subsection 76 (2) (child abuse), and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation is guilty of an offence and on conviction is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than two years, or to both. Idem

(3) A person who contravenes subsection 42 (8) or 73 (11) (publication of identifying information) or an order prohibiting publication made under clause 42 (7) (c) or subsection 42 (9), and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation, is guilty of an offence and on conviction is liable to a fine of not more than \$10,000 or to imprisonment for a term of not more than three years, or to both. Idem

#### CHILD'S RELIGIOUS FAITH

**83.**—(1) For the purposes of this section, a child shall be deemed to have the religious faith agreed upon by the child's parent, but where there is no agreement or the court cannot readily determine what the religious faith agreed upon is or whether any religious faith is agreed upon, the court may decide what the child's religious faith is, if any, on the basis of the child's circumstances. How child's religious faith determined

(2) The court shall consider the child's views and wishes, if they can be reasonably ascertained, in determining what the child's religious faith is, if any. Child's wishes to be consulted

(3) A Protestant child shall not be committed under this Part to the care of a Roman Catholic society or institution and a Roman Catholic child shall not be committed under this Part to a Protestant society or institution, and a Protestant child shall not be placed in a foster home with a Roman Catholic family and a Roman Catholic child shall not be placed in a foster home with a Protestant family, and, where a child committed under this Part is other than Protestant or Roman Catholic, the child shall be placed where practicable with a family of his or her own religious faith, if any. Religious faith of child

Where only  
one society

(4) Subsection (3) does not apply to the commitment of a child to the care of a society in a municipality in which there is only one society.

Application  
to waive  
subs. (3)

(5) Where a society,

(a) is unable to place a child in a suitable foster home within a reasonable time because of the operation of subsection (3); and

(b) would be able to place the child in a suitable foster home but for the operation of subsection (3),

the society or a Director may apply to the court who may order that subsection (3) does not apply to the child in respect of the placement.

#### INJUNCTIONS

Injunction

**84.**—(1) The Supreme Court may grant an injunction to restrain a person from contravening section 80, on the society's application.

Variation,  
etc.

(2) The Supreme Court may vary or terminate an order made under subsection (1), on any person's application.

## PART IV

## YOUNG OFFENDERS

**85.** In this Part,

Interpretation

- (a) “Board” means the Custody Review Board established under subsection 92 (1);
- (b) “federal Act” means the *Young Offenders Act* (Canada); S.C. 1980-81-82-83,  
c. 110
- (c) “maximum security place of custody” means a place of secure custody in which the Minister has established a maximum security custody program;
- (d) “medium security place of custody” means a place of secure custody in which the Minister has established a medium security custody program;
- (e) “place of open custody” means a place or facility designated as a place of open custody under subsection 24 (1) of the federal Act;
- (f) “place of open temporary detention” means a place of temporary detention in which the Minister has established an open detention program;
- (g) “place of secure custody” means a place or facility designated for the secure containment or restraint of young persons under subsection 24 (1) of the federal Act;
- (h) “place of secure temporary detention” means a place of temporary detention in which the Minister has established a secure detention program;
- (i) “place of temporary detention” means a place or facility designated as a place of temporary detention under subsection 7 (1) of the federal Act;
- (j) “probation officer” means a probation officer appointed under clause 87 (1) (b);
- (k) “provincial director” means a provincial director appointed under clause 87 (1) (a);
- (l) “services and programs” means,
  - (i) prevention programs,

- (ii) pre-trial detention and supervision programs,
  - (iii) open and secure custody programs,
  - (iv) probation services,
  - (v) programs for the administration and supervision of dispositions, and
  - (vi) other related services and programs;
- (m) “young person” means a child as defined in paragraph 6 of subsection 3 (1) who is, or, in the absence of evidence to the contrary, appears to be,
- (i) twelve years of age, or more, but
  - (ii) under sixteen years of age,

and includes a person sixteen years of age or more charged with having committed an offence while he or she was twelve years of age or more but under sixteen years of age.

#### PROGRAMS AND OFFICERS

Services  
and  
programs

**86.**—(1) The Minister may,

- (a) establish, operate and maintain services and programs; and
- (b) make agreements with persons for the provision of services and programs,

R.S.O. 1980,  
c. 400

for or on behalf of young persons for the purposes of the federal Act and the *Provincial Offences Act*, and may make payments for those services and programs out of legislative appropriations.

Secure  
and open  
temporary  
detention  
programs

(2) The Minister may establish,

- (a) secure temporary detention programs, in which restrictions are continuously imposed on the liberty of young persons by physical barriers, close staff supervision or limited access to the community; and
- (b) open temporary detention programs, in which restrictions that are less stringent than in a secure



temporary detention program are imposed on the liberty of young persons,

in places of temporary detention.

(3) The Minister may establish,

Maximum  
and medium  
security  
custody  
programs

- (a) maximum security custody programs, in which restrictions are continuously imposed on the liberty of young persons by physical barriers, close staff supervision or limited access to the community; and
- (b) medium security custody programs, in which restrictions that are less stringent than in a maximum security custody program are imposed on the liberty of young persons,

in places of secure custody.

(4) The Minister may establish open custody programs in places of open custody.

Open custody  
programs

(5) A place of secure custody and a place of secure temporary detention may be locked for the detention of young persons.

Where  
locking up  
permitted

**87.**—(1) The Minister may appoint any person as,

Appointments  
by Minister

- (a) a provincial director, to perform any or all of the duties and functions of a provincial director,

- (i) under the federal Act, and

- (ii) under the regulations; and

- (b) a probation officer, to perform any or all of the duties and functions,

- (i) of a youth worker under the federal Act, and

- (ii) of a probation officer for the purpose of dealing with young persons under the *Provincial Offences Act*, and

R.S.O. 1980,  
c. 400

- (iii) of a probation officer under the regulations.

(2) The Minister may set out in an appointment made under subsection (1) any conditions or limitations to which it is subject.

Limitations,  
etc., on  
appointments

Probation  
officer has  
powers of  
peace officer

(3) While performing his or her duties and functions, a probation officer appointed under clause (1) (b) has the powers of a peace officer.

Remuneration  
and expenses

R.S.O. 1980,  
c. 418

(4) The remuneration and expenses of a person appointed under subsection (1) who is not a public servant under the *Public Service Act* shall be fixed by the Minister and shall be paid out of legislative appropriations.

Reports  
and  
information

**88.** A person in charge of a service or program provided under subsection 86 (1), a person in charge of a place of temporary detention, open custody or secure custody, and a probation officer,

- (a) shall make the prescribed reports and furnish the prescribed information to the Minister, in the prescribed form and at the prescribed intervals; and
- (b) shall make a report to the Minister whenever the Minister requests it, in the form and containing the information specified by the Minister.

#### TEMPORARY DETENTION

Open  
detention  
unless  
provincial  
director  
determines  
otherwise

**89.**—(1) A young person who is detained under the federal Act in a place of temporary detention shall be detained in a place of open temporary detention unless a provincial director determines under subsection (2) that the young person is to be detained in a place of secure temporary detention.

Where  
secure  
detention  
available

(2) A provincial director may detain a young person in a place of secure temporary detention if the young person is charged with an offence for which an adult would be liable to imprisonment for five years or more and,

- (a) the offence includes causing or attempting to cause serious bodily harm to another person;
- (b) the young person has, at any time, failed to appear in court when required to do so under the federal Act or the *Juvenile Delinquents Act* (Canada) or escaped or attempted to escape from lawful detention; or
- (c) the young person has, within the twelve months immediately preceding the offence on which the current charge is based, been convicted of an offence for which an adult would be liable to imprisonment for five years or more,

R.S.C. 1970,  
c. J-3

where the provincial director is satisfied that it is necessary to detain the young person in a place of secure temporary detention,

- (d) to ensure the young person's attendance in court; or
- (e) to protect the public interest or safety.

(3) Despite subsection (1), a young person who is apprehended because he or she has left or has not returned to a medium security or maximum security place of custody may be detained in a place of secure temporary detention until he or she is returned to the first-named place of custody. Idem

(4) Despite subsection (1), a young person who is detained under the federal Act in a place of temporary detention may be detained in a place of secure temporary detention for a period not exceeding twenty-four hours while a provincial director makes a determination in respect of the young person under subsection (2). Idem

(5) A young person who is being detained in a place of secure temporary detention and is brought before a youth court under the federal Act for a review may request that the youth court review the level of his or her detention, and the youth court may confirm the provincial director's decision under subsection (2) or may direct that the young person be transferred to a place of open temporary detention. Review  
by youth  
court

CUSTODY

**90.**—(1) A young person who is committed to secure custody under the federal Act shall be held in a medium security place of custody unless a provincial director determines under subsection (2) that the young person is to be held in a maximum security place of custody. Medium  
rather than  
maximum  
security  
custody  
unless  
provincial  
director  
determines  
otherwise

(2) A provincial director may place a young person in or transfer a young person to a maximum security place of custody if the young person is committed to secure custody under the federal Act for an offence for which an adult would be liable to imprisonment for five years or more and, Where  
maximum  
security  
custody  
available

- (a) the offence for which the young person is committed to secure custody includes causing or attempting to cause serious bodily harm to another person; or

- (b) the young person has, within the twelve months immediately preceding the offence for which he or she is committed to secure custody,
  - (i) been held in a maximum security place of custody, or
  - (ii) been found guilty of an offence for which an adult would be liable to imprisonment for five years or more,

where the provincial director is satisfied that it would not be appropriate to hold the young person in a medium security place of custody, having regard to,

- (c) the young person's age and previous history;
- (d) the circumstances of the commission of the offence for which the young person is committed to secure custody;
- (e) the contents of a pre-disposition report;
- (f) the needs of the young person; and
- (g) the need to protect the public interest and safety.

Transfer  
from  
maximum to  
medium  
security  
custody

(3) A provincial director may transfer a young person from a maximum security place of custody to a medium security place of custody if the provincial director is satisfied that the transfer is justified because the young person has made sufficient progress or for some other appropriate reason.

Reasons

(4) A provincial director who makes a determination under this section shall give written reasons for the determination to the young person and to the persons in charge of the places of custody from and to which the young person is transferred.

Young  
persons in  
open custody  
R.S.O. 1980,  
c. 400

**91.** Where a young person is sentenced to a term of imprisonment for breach of probation under clause 75 (d) of the *Provincial Offences Act*, to be served in open custody as set out in section 91k of that Act,

- (a) the young person shall be held in a place of open custody specified by a provincial director; and
- (b) the provisions of section 35 (temporary release) of the federal Act apply with necessary modifications.



## CUSTODY REVIEW BOARD

**92.**—(1) The Custody Review Board is established, composed of the prescribed number of members appointed by the Lieutenant Governor in Council, and has the powers and duties given to it by this Part and the regulations.

Custody  
Review  
Board

(2) The Lieutenant Governor in Council may appoint a member of the Board as chairman and may appoint one or more other members as vice-chairmen.

Chairman  
and vice-  
chairmen

(3) A member of the Board shall hold office for the prescribed term.

Term

(4) The prescribed number of members of the Board are a quorum.

Quorum

(5) The chairman and vice-chairmen and the other members of the Board shall be paid the *per diem* allowances determined by the Lieutenant Governor in Council and are entitled to their reasonable and necessary travelling and living expenses while attending meetings or otherwise engaged in the work of the Board.

Remuneration

(6) The Board shall conduct reviews under section 93 and perform such other duties as are assigned to it by the regulations.

Duties of  
Board

**93.**—(1) A young person may apply to the Board for a review of,

Application  
to Board

- (a) a provincial director's decision to hold the young person in or transfer the young person to a maximum security place of custody;
- (b) the particular place where the young person is held or to which the young person has been transferred;
- (c) a provincial director's refusal to authorize the young person's temporary release under section 35 of the federal Act; or
- (d) the young person's transfer from a place of open custody to a place of secure custody under subsection 24 (9) of the federal Act,

within thirty days of the decision, placement or transfer, as the case may be.

Duty of  
Board

(2) The Board shall conduct a review with respect to an application made under subsection (1) and may do so by holding a hearing.

Idem

(3) The Board shall advise the young person whether it intends to hold a hearing or not within ten days of receiving the young person's application.

R.S.O. 1980,  
c. 484, does  
not apply

(4) The *Statutory Powers Procedure Act* does not apply to a hearing held under subsection (2).

Idem

(5) The Board shall complete its review and make a determination within thirty days of receiving a young person's application, unless,

- (a) the Board holds a hearing with respect to the application; and
- (b) the young person and the provincial director whose decision is being reviewed consent to a longer period for the Board's determination.

Board's  
recommendations

(6) After conducting a review under subsection (2), the Board may,

- (a) recommend to the provincial director,
  - (i) that the young person be transferred to a medium security place of custody,
  - (ii) where the Board is of the opinion that the place where the young person is held or to which he or she has been transferred is not appropriate to meet the young person's needs, that the young person be transferred to another place,
  - (iii) that the young person's temporary release be authorized under section 35 of the federal Act, or
  - (iv) where the young person has been transferred under subsection 24 (9) of the federal Act, that the young person be returned to a place of open custody; or
- (b) confirm the decision, placement or transfer.

APPREHENSION OF YOUNG PERSONS WHO ARE ABSENT FROM  
CUSTODY WITHOUT PERMISSION

**94.**—(1) A peace officer, the person in charge of a place of temporary detention or that person's delegate, who believes on reasonable and probable grounds that a young person detained under the federal Act or the *Provincial Offences Act* in a place of temporary detention,

Apprehension  
of young  
person absent  
from place of  
temporary  
detention  
R.S.O. 1980,  
c. 400

- (a) has left the place without the consent of the person in charge; and
- (b) fails or refuses to return there,

may apprehend the young person with or without a warrant and,

- (c) take the young person to a place of temporary detention to be detained until he or she can be returned;
- (d) arrange for the young person to be returned; or
- (e) return the young person,

to the first-mentioned place of temporary detention.

(2) A peace officer, the person in charge of a place of open custody or that person's delegate, who believes on reasonable and probable grounds that a young person held in a place of open custody as described in section 91,

Idem:  
place of open  
custody

- (a) has left the place without the consent of the person in charge and fails or refuses to return there; or
- (b) fails or refuses to return to the place of open custody upon completion of a period of temporary release under clause 91 (b),

may apprehend the young person with or without a warrant and,

- (c) take the young person to a place of temporary detention to be detained until he or she can be returned;
- (d) arrange for the young person to be returned; or
- (e) return the young person,

to the first-mentioned place of open custody.

Young  
person to  
be returned  
within forty-  
eight hours

(3) A young person who is detained in a place of temporary detention under this section shall be returned to the place from which he or she is absent, as soon as possible, but in any event within forty-eight hours after being detained.

Warrant to  
apprehend  
young  
person

(4) A justice of the peace who is satisfied on the basis of a sworn information that there are reasonable and probable grounds to believe that a young person held in a place of temporary detention or open custody,

- (a) has left the place without the consent of the person in charge and fails or refuses to return there; or
- (b) fails or refuses to return to a place of open custody upon completion of a period of temporary release under clause 91 (b),

may issue a warrant authorizing a peace officer, the person in charge of the place of temporary detention or open custody or that person's delegate to apprehend the young person.

Authority  
to enter,  
etc.

(5) A warrant issued under subsection (4) authorizes a person to whom it is directed to enter any premises where he or she reasonably believes the young person to be, by force if necessary, and to search for and remove the young person.

Regulations  
re exercise  
of power of  
entry

(6) A person authorized to enter premises by a warrant issued under subsection (4) shall exercise the power of entry in accordance with the regulations.



PART V

RIGHTS OF CHILDREN

**95.** In this Part, “child in care” means a child who is receiving residential services from a service provider.

Interpretation

LOCKING UP AND OTHER RESTRICTIONS ON LIBERTY

**96.—**(1) No service provider shall detain a child or permit a child to be detained in locked premises in the course of the provision of a service to the child, except as Part IV (Young Offenders) and Part VI (Extraordinary Measures) authorize.

Locking up restricted

(2) No service provider shall impose or permit the imposition of continuous restrictions on the liberty of a child in the service provider’s care, by physical barriers, close staff supervision or limited access to the community, except as Part IV and Part VI authorize.

Restrictions on liberty generally

(3) Subsections (1) and (2) do not prohibit the routine locking of premises for security at night.

Application of subss. (1, 2)

CORPORAL PUNISHMENT

**97.** No service provider shall inflict corporal punishment on a child or permit corporal punishment to be inflicted on a child in the course of the provision of a service to the child.

No corporal punishment

OFFICE OF CHILD AND FAMILY SERVICE ADVOCACY

**98.** The Minister may establish an Office of Child and Family Service Advocacy to,

Office of Child and Family Service Advocacy

- (a) co-ordinate and administer a system of advocacy, except for advocacy before a court, on behalf of children and families who receive approved services or services purchased by approved agencies;
- (b) advise the Minister on matters and issues concerning the interests of those children and families; and
- (c) perform any similar functions given to it by this Act or the regulations or another Act or the regulations made under another Act.

RIGHTS OF CHILDREN IN CARE

**99.—**(1) A child in care has a right,

Rights of communication, etc.

- (a) to speak in private with, visit and receive visits from members of his or her family regularly, subject to subsection (2);
- (b) to speak in private with and receive visits from,
  - (i) the child's solicitor,
  - (ii) another person representing the child, including an advocate appointed for the child by the Office of Child and Family Service Advocacy referred to in section 98,
  - (iii) the Ombudsman appointed under the *Ombudsman Act* and members of the Ombudsman's staff, and
  - (iv) a member of the Legislative Assembly of Ontario or of the Parliament of Canada; and
- (c) to send and receive mail that is not read, examined or censored by another person, subject to subsection (3).

R.S.O. 1980,  
c. 325

When child  
a Crown  
ward

(2) A child in care who is a Crown ward is not entitled as of right to speak with, visit or receive visits from a member of his or her family, except under an order for access made under Part III (Child Protection).

Opening,  
etc.,  
of mail  
to child

- (3) Mail to a child in care,
  - (a) may be opened by the service provider or a member of the service provider's staff in the child's presence and may be inspected for articles prohibited by the service provider;
  - (b) where the service provider believes on reasonable grounds that the contents of the mail may cause the child physical or emotional harm, may be examined or read by the service provider or a member of the service provider's staff in the child's presence, subject to clause (c);
  - (c) shall not be examined or read by the service provider or a member of the service provider's staff if it is to or from the child's solicitor; and
  - (d) shall not be censored or withheld from the child.

Personal  
liberties

**100.** A child in care has a right,

- (a) to have reasonable privacy and possession of his or her own personal property; and
- (b) to receive the religious instruction and participate in the religious activities of his or her choice, subject to section 102.

**101.**—(1) A child in care has a right to a plan of care designed to meet the child's particular needs, which shall be prepared within thirty days of the child's admission to the residential placement. Plan of care

(2) A child in care has a right, Rights to care

- (a) to participate in the development of the child's individual plan of care and in any changes made to it;
- (b) to receive meals that are well-balanced, of good quality and appropriate for the child;
- (c) to be provided with clothing that is of good quality and appropriate for the child, given the child's size and activities and prevailing weather conditions;
- (d) to receive medical and dental care, subject to section 102, at regular intervals and whenever required, in a community setting whenever possible;
- (e) to receive an education that corresponds to the child's aptitudes and abilities, in a community setting whenever possible; and
- (f) to participate in recreational and athletic activities that are appropriate for the child's aptitudes and interests, in a community setting whenever possible.

**102.** Subject to subsection 48 (4) and sections 59 and 60 (temporary order, society and Crown wards) of Part III (Child Protection), the parent of a child in care retains any right that he or she may have, Parental consent, etc.

- (a) to direct the child's education and religious upbringing; and
- (b) to give or refuse consent to medical treatment for the child.

**103.** A child in care has a right to be consulted and to express his or her views whenever significant decisions concerning the child are made, including decisions with respect to Right to be heard

medical treatment, education or religion and decisions with respect to the child's discharge from the placement or transfer to another residential placement.

Right to  
be informed

**104.** A child in care has a right to be informed of,

- (a) the child's rights under this Part;
- (b) the internal complaints procedure established under subsection 105 (1) and the further review available under section 106;
- (c) the existence of the Office of Child and Family Service Advocacy referred to in section 98;
- (d) the review procedures available for children twelve years of age or older under sections 35, 36 and 37 of Part II (Voluntary Access to Services);
- (e) the child's responsibilities while in the placement; and
- (f) the rules governing day-to-day operation of the residential service, including disciplinary procedures,

upon admission to the residential placement and in language suitable for the child's level of understanding.

#### COMPLAINT AND REVIEW PROCEDURES

Internal  
complaints  
procedure

**105.**—(1) A service provider who places children in residential placements shall establish a written procedure, in accordance with the regulations, for hearing and dealing with complaints regarding alleged violations of the rights of children under this Part.

Idem

(2) A service provider shall conduct a review, in accordance with the procedure established under subsection (1), on the complaint of,

- (a) a child in care;
- (b) the child's parent; or
- (c) another person representing the child,

and shall seek to resolve the complaint.

Further  
review

**106.**—(1) Where a person referred to in subsection 105 (2) who makes a complaint and is not satisfied with the



result of the review conducted under that subsection requests in writing that the Minister appoint a person to conduct a further review of the complaint, the Minister shall appoint a person who is not employed by the service provider to do so.

(2) A person appointed under subsection (1) shall review the complaint in accordance with the regulations and may, but is not required to, do so by holding a hearing. Idem

(3) The *Statutory Powers Procedure Act* does not apply to a hearing held under subsection (2). R.S.O. 1980, c. 484 does not apply

(4) A person appointed under subsection (1) has, for the purposes of the review, all the powers of a program supervisor appointed under subsection 6 (2) of Part I (Flexible Services). Powers of appointed person

(5) A person appointed under subsection (1) shall, within thirty days after the day of the appointment, complete the review, set out in a report his or her findings and recommendations, including the reasons for not holding a hearing if none was held, and provide copies of the report to, Review and report within thirty days

- (a) the person who made the complaint;
- (b) the service provider; and
- (c) the Minister.

**107.—**(1) Where the Minister decides to take any action with respect to a complaint after receiving a report under subsection 106 (5), the Minister shall advise the person who made the complaint and the service provider of the decision. Minister to advise persons affected of any decision

(2) The Minister's decision referred to in subsection (1) does not affect any other remedy that may be available. Remedies preserved

## PART VI

## EXTRAORDINARY MEASURES

Interpretation

**108.** In this Part,

- (a) “administrator” means the person in charge of a secure treatment program;
- (b) “intrusive procedure” means,
  - (i) a mechanical means of controlling behaviour,
  - (ii) an aversive stimulation technique, or
  - (iii) any other procedure,that is prescribed as an intrusive procedure;
- (c) “mental disorder” means a substantial disorder of emotional processes, thought or cognition which grossly impairs a person’s capacity to make reasoned judgments;
- (d) “review team” means an interdisciplinary review team established under subsection 123 (1);
- (e) “secure isolation room” means a locked room approved under subsection 120 (1) for use for the secure isolation of children;
- (f) “secure treatment program” means a program established or approved by the Minister under subsection 109 (1).

## SECURE TREATMENT PROGRAMS

Minister may  
establish  
or approve  
programs**109.—**(1) The Minister may,

- (a) establish, operate and maintain; or
- (b) approve,

programs for the treatment of children with mental disorders, in which continuous restrictions are imposed on the liberty of the children by physical barriers, close staff supervision or limited access to the community.

(2) The Minister may impose terms and conditions on an approval given under subsection (1) and may vary or amend the terms and conditions or impose new terms and conditions at any time.

Terms and  
conditions

(3) No child shall be admitted to a secure treatment program except by a court order under section 113 (commitment to secure treatment program) or under section 118 (emergency admission).

Admission  
of children

(4) The premises of a secure treatment program may be locked for the detention of children.

Locking up  
permitted

#### COMMITMENT TO SECURE TREATMENT

**110.**—(1) Any one of the following persons may, with the administrator's written consent, apply to the court for an order for the child's commitment to a secure treatment program:

Who may  
apply for  
order for  
child's  
commitment

1. Where the child is less than sixteen years of age,
  - i. the child's parent,
  - ii. a person other than an administrator who is caring for the child, if the child's parent consents to the application, or
  - iii. a society that has custody of the child under an order made under Part III (Child Protection).
2. Where the child is sixteen years of age or more,
  - i. the child,
  - ii. the child's parent, if the child consents to the application, or
  - iii. a physician.

(2) Where an application is made under subsection (1), the court shall deal with the matter,

Time for  
hearing

- (a) where the child has been admitted to a secure treatment program under section 118 (emergency), within five days of the making of the application; or
- (b) where the child has not been admitted to a secure treatment program under section 118, within ten

days of the making of an order under subsection (5) (legal representation) or, where no such order is made, within ten days of the making of the application.

Time for  
determination

(3) Where the child who is the subject of an application under subsection (1) has been admitted to a secure treatment program under section 118, the court shall dispose of the application within forty-five days from the date of the application, subject to subsection (4).

Adjournments

(4) The court may adjourn the hearing of an application but shall not adjourn it for more than thirty days unless the applicant and the child consent to the longer adjournment.

Legal  
representation  
of child

(5) Where an application is made under subsection (1) in respect of a child who does not have legal representation, the court shall, as soon as practicable and in any event before the hearing of the application, direct that legal representation be provided for the child.

Child  
entitled  
to be  
present

(6) The child who is the subject of an application under subsection (1) is entitled to be present at the hearing unless,

- (a) the court is satisfied that being present at the hearing would cause the child emotional harm; or
- (b) the child, after obtaining legal advice, consents in writing to the holding of the hearing in his or her absence.

Court may  
require  
child's  
presence

(7) The court may require a child who has consented to the holding of the hearing in his or her absence under clause (6) (b) to be present at all or part of the hearing.

Child may  
waive  
hearing of  
oral  
evidence

**111.**—(1) Where an application is made under subsection 110 (1), the court shall deal with the matter by holding a hearing and shall hear oral evidence unless the child, after obtaining legal advice, consents in writing to the making of an order under subsection 113 (1) without the hearing of oral evidence, and the consent is filed with the court.

Court may  
hear oral  
evidence  
despite  
consent

(2) The court may hear oral evidence although the child has given a consent under subsection (1).

Time  
limitation

(3) A child's consent under subsection (1) is not effective for more than a single 180 day period referred to in subsection 114 (1) (period of commitment).



**112.**—(1) The court may, at any time after an application is made under subsection 110 (1), order that the child attend within a specified time for an assessment before a specified person who is qualified, in the court's opinion, to perform an assessment to assist the court to determine whether the child should be committed to a secure treatment program and has consented to perform the assessment. Assessment

(2) The person performing an assessment under subsection (1) shall make a written report of the assessment to the court within the time specified in the order, which shall not be more than thirty days unless the court is of the opinion that a longer assessment period is necessary. Report

(3) The court shall not order an assessment to be performed by a person who provides services in the secure treatment program to which the application relates. Who may not perform assessment

(4) The court shall provide a copy of the report to, Copies of report

- (a) the applicant;
- (b) the child, subject to subsection (6);
- (c) the child's solicitor;
- (d) a parent appearing at the hearing;
- (e) the administrator of the secure treatment program; and
- (f) where the child is an Indian or a native person, a representative chosen by the child's band or native community.

(5) The court may cause a copy of the report to be given to a parent who does not attend the hearing but is, in the court's opinion, actively interested in the proceedings. Idem

(6) The court may withhold all or part of the report from the child where the court is satisfied that disclosure of all or part of the report to the child would cause the child emotional harm. Court may withhold report from child

**113.**—(1) The court may order that a child be committed to a secure treatment program only where the court is satisfied that, Commitment to secure treatment: criteria

- (a) the child has a mental disorder;

(b) the child has, as a result of the mental disorder, within the forty-five days immediately preceding,

(i) the application under subsection 110 (1),

S.C. 1980-81-82-83,  
c. 110  
R.S.O. 1980,  
c. 400

(ii) the child's detention or custody under the *Young Offenders Act* (Canada) or under the *Provincial Offences Act*, or

R.S.O. 1980,  
c. 262

(iii) the child's admission to a psychiatric facility under the *Mental Health Act* as an involuntary patient,

caused or attempted to cause serious bodily harm to himself, herself or another person;

(c) the child has,

(i) within the twelve months immediately preceding the application, but on another occasion than that referred to in clause (b), caused, attempted to cause or by words or conduct made a substantial threat to cause serious bodily harm to himself, herself or another person, or

(ii) in committing the act or attempt referred to in clause (b), caused or attempted to cause a person's death;

(d) the secure treatment program would be effective to prevent the child from causing or attempting to cause serious bodily harm to himself, herself or another person;

(e) treatment appropriate for the child's mental disorder is available at the place of secure treatment to which the application relates; and

(f) no less restrictive method of providing treatment appropriate for the child's mental disorder is appropriate in the circumstances.

Where child under twelve

(2) Where the child is less than twelve years old, the court shall not make an order under subsection (1) unless the Minister consents to the child's commitment.

Additional requirement where applicant is physician

(3) Where the applicant is a physician, the court shall not make an order under subsection (1) unless the court is satis-

fied that the applicant believes the criteria set out in that subsection are met.

**114.**—(1) Where the court makes an order under subsection 113 (1), the child shall be committed to the secure treatment program for a period of 180 days, subject to subsection (2). Period of commitment

(2) Where a child is committed to a secure treatment program on a society’s application, the child shall be released on a day sixty days after the child’s admission to the secure treatment program unless before that day, Where society is applicant

- (a) the child’s parent consents to the child’s commitment for a 180 day period; or
- (b) the child is made a Crown or society ward under Part III (Child Protection).

(3) In the calculation of a child’s period of commitment, time spent in the secure treatment program before an order has been made under section 113 (commitment) or pending an application under section 116 (extension) shall be counted. How time calculated

(4) A person who is the subject of an order made under subsection 113 (1) or 116 (4) may be kept in the secure treatment program after attaining the age of eighteen years, until the order expires. Where order expires after eighteenth birthday

**115.**—(1) Where the court makes an order under subsection 113 (1) or 116 (4), the court shall give, Reasons, etc.

- (a) reasons for its decision;
- (b) a statement of the plan, if any, for the child’s care on release from the secure treatment program; and
- (c) a statement of the less restrictive alternatives considered by the court, and the reasons for rejecting them.

(2) Where no plan for the child’s care on release from the secure treatment program is available at the time of the order, the administrator shall, within ninety days of the date of the order, prepare such a plan and file it with the court. Plan for care on release

EXTENSION OF PERIOD OF COMMITMENT

**116.**—(1) Where a child is the subject of an order made under subsection 113 (1) (commitment) or subsection (4), Who may apply for extension

- (a) a person referred to in subsection 110 (1), with the administrator's written consent; or
- (b) the administrator, with a parent's written consent or, where the child is in a society's lawful custody, the society's consent,

may, before the expiry of the period of commitment, apply for an order extending the child's commitment to the secure treatment program.

Child may  
be kept in  
program  
while  
application  
pending

(2) Where an application is made under subsection (1), the child may be kept in the secure treatment program until the application is disposed of.

ss. 110 (4-7),  
111, 112 apply

(3) Subsections 110 (4), (5), (6) and (7) (hearing) and sections 111 (child's waiver) and 112 (assessment) apply with necessary modifications to an application made under subsection (1).

Criteria  
for  
extension

(4) The court may make an order extending a child's commitment to a secure treatment program only where the court is satisfied that,

- (a) the child has a mental disorder;
- (b) the secure treatment program would be effective to prevent the child from causing or attempting to cause serious bodily harm to himself, herself or another person;
- (c) no less restrictive method of providing treatment appropriate for the child's mental disorder is appropriate in the circumstances;
- (d) the child is receiving the treatment proposed at the time of the original order under subsection 113 (1), or other appropriate treatment; and
- (e) there is an appropriate plan for the child's care on release from the secure treatment program.

Period of  
extension

(5) Where the court makes an order under subsection (4), the child shall be committed to the secure treatment program for a further period of 180 days.



## RELEASE BY ADMINISTRATOR

**117.**—(1) The administrator may release a child from a secure treatment program unconditionally where the administrator,

Unconditional  
release by  
administrator

- (a) has given the person with lawful custody of the child reasonable notice of the intention to release him or her; and
- (b) is satisfied that,
  - (i) the child no longer requires the secure treatment program, and
  - (ii) there is an appropriate plan for the child's care on release from the secure treatment program.

(2) The administrator may release a child from a secure treatment program temporarily for medical or compassionate reasons, or for a trial placement in an open setting, for such period and on such terms and conditions as the administrator determines.

Conditional  
release

(3) Subsections (1) and (2) apply despite an order made under subsection 113 (1) (commitment) or 116 (4) (extension).

Adminis-  
trator  
may release  
despite court  
order

## EMERGENCY ADMISSION

**118.**—(1) Any one of the following persons may apply to the administrator for the emergency admission of a child to a secure treatment program:

Who may  
apply for  
emergency  
admission

1. Where the child is less than sixteen years of age,
  - i. the child's parent,
  - ii. a person who is caring for the child with a parent's consent,
  - iii. a child protection worker who has apprehended the child under section 41 of Part III (Child Protection), or
  - iv. a society that has custody of the child under an order made under Part III.
2. Where the child is sixteen years of age or more,

- i. the child,
- ii. the child's parent, if the child consents to the application, or
- iii. a physician.

Criteria  
for  
admission

(2) The administrator may admit a child to the secure treatment program on an application under subsection (1) where the administrator believes on reasonable grounds that,

- (a) the child has a mental disorder;
- (b) the child has, as a result of the mental disorder, within the twenty-four hours immediately preceding the application, caused or attempted to cause serious bodily harm to himself, herself or another person;
- (c) the secure treatment program would be effective to prevent the child from causing or attempting to cause serious bodily harm to himself, herself or another person;
- (d) treatment appropriate for the child's mental disorder is available at the place of secure treatment to which the application relates; and
- (e) no less restrictive method of providing treatment appropriate for the child's mental disorder is appropriate in the circumstances.

Where child  
under twelve

(3) Where the child is less than twelve years old, the administrator shall not admit the child under subsection (2) unless the Minister consents to the child's admission.

Additional  
requirement  
where  
applicant  
is physician

(4) Where the applicant is a physician, the administrator shall not admit the child under subsection (2) unless the administrator is satisfied that the applicant believes the criteria set out in that subsection are met.

Five day  
limit

(5) As soon as practicable, but in any event within five days after a child is admitted to a secure treatment program under subsection (2),

- (a) the child shall be released; or
- (b) an application shall be made under section 110 for an order for the child's commitment to the secure treatment program.

## POLICE ASSISTANCE

**119.** A peace officer may take a child to a place where there is a secure treatment program,

Police may take child for secure treatment

- (a) for emergency admission, at the request of an applicant referred to in subsection 118 (1); or
- (b) where an order for the child's commitment to the secure treatment program has been made under section 113.

## SECURE ISOLATION

**120.**—(1) A Director may approve a locked room that complies with the prescribed standards and is located in premises where an approved service or a service purchased by an approved agency is provided, for use for the secure isolation of children, on such terms and conditions as the Director determines.

Director's approval

(2) Where a Director is of the opinion that a secure isolation room is unnecessary or is being used in a manner that contravenes this Part or the regulations, the Director may withdraw the approval given under subsection (1) and shall give the affected service provider notice of the decision, with reasons.

Withdrawal of approval

**121.**—(1) No service provider shall isolate a child who is in the service provider's care in a locked place or permit the child to be isolated in a locked place, except in accordance with this section and the regulations.

Prohibition

(2) Subsection (1) does not prohibit the routine locking at night of rooms in the premises of secure treatment programs or in places of secure custody and places of secure temporary detention under Part IV (Young Offenders).

Secure treatment, secure custody and secure temporary detention

(3) A child may be placed in a secure isolation room where,

Criteria for use of secure isolation

(a) in the service provider's opinion,

(i) the child's conduct indicates that the child is likely, in the immediate future, to cause serious property damage or to cause another person serious bodily harm, and

(ii) no less restrictive method of restraining the child is practicable; and

- (b) where the child is less than twelve years of age, a Director gives permission for the child to be placed in a secure isolation room because of exceptional circumstances.

One hour  
limit

(4) A child who is placed in a secure isolation room shall be released within one hour unless the person in charge of the premises approves the child's longer isolation in writing and records the reasons for not restraining the child by a less restrictive method.

Continuous  
observation  
of child

(5) The service provider shall ensure that a child who is placed in a secure isolation room is continuously observed by a responsible person.

Review

(6) Where a child is kept in a secure isolation room for more than one hour, the person in charge of the premises shall review the child's isolation at prescribed intervals.

Release

(7) A child who is placed in a secure isolation room shall be released as soon as the person in charge is satisfied that the child is not likely to cause serious property damage or serious bodily harm in the immediate future.

Maximum  
periods

(8) In no event shall a child be kept in a secure isolation room for a period or periods that exceed an aggregate of eight hours in a given twenty-four hour period or an aggregate of twenty-four hours in a given week.

Review  
of use  
of secure  
isolation

**122.** A person in charge of premises containing a secure isolation room shall review,

- (a) the need for the secure isolation room; and
- (b) the prescribed matters,

every three months from the date on which the secure isolation room is approved under subsection 120 (1), shall make a written report of each review to a Director and shall make such additional reports as are prescribed.

#### REVIEW TEAMS

Review  
team

**123.—**(1) A service provider who is approved under subsection 124 (1) shall establish an interdisciplinary review team with the duty of reviewing and approving or refusing the proposed use of intrusive procedures.

Idem

- (2) A review team shall consist of,



- (a) persons employed by the service provider; and
- (b) one person who is not employed by the service provider and is approved by the Minister,

and may also include a legally qualified medical practitioner.

(3) Any three members of a review team may review and approve or refuse the proposed use of an intrusive procedure. Panel

(4) A review team shall make reports of its activities to the Minister at the prescribed intervals. Report to Minister

INTRUSIVE PROCEDURES

**124.**—(1) The Minister may approve a service provider for the use of the intrusive procedures specified in the approval and may set out in the approval any conditions and limitations to which it is subject. Approval by Minister

(2) The Minister may at any time revoke, suspend or amend an approval given under subsection (1) and shall give the affected service provider notice, with reasons, of the Minister's decision. Revocation, etc., of approval

**125.**—(1) No service provider shall use or permit the use of an intrusive procedure in respect of a child in the service provider's care, except in accordance with this section. Intrusive procedures restricted

(2) A service provider who is approved under subsection 124 (1) may use or permit the use of an intrusive procedure in respect of a child in the service provider's care only, When service provider may use or permit intrusive procedure

- (a) if the intrusive procedure is specified in the approval;
- (b) in accordance with the conditions and limitations set out in the Minister's approval; and
- (c) with the approval, obtained in advance and not more than thirty days before the intrusive procedure is used, of the service provider's review team.

(3) A review team shall not approve the use of an intrusive procedure in respect of a child unless, Criteria

- (a) if the child is sixteen years of age or more, the child consents to its use;

- (b) if the child is less than sixteen years of age, the child's parent or, where the child is in a society's lawful custody, the society consents to its use;
- (c) the child's behaviour warrants its use;
- (d) at least one less intrusive alternative has been attempted without success in improving the child's behaviour;
- (e) no other less intrusive alternative is practicable; and
- (f) there are reasonable grounds to believe that the procedure would improve the child's behaviour.

Idem

(4) A review team shall not approve the use of an intrusive procedure in respect of a child who is less than sixteen years of age or lacks capacity within the meaning of section 4 without first considering the child's views and preferences, where they can be reasonably ascertained.

Emergency

(5) Where,

- (a) a service provider who is approved under subsection 124 (1) believes on reasonable grounds that delay in the use of an intrusive procedure in respect of a child in the service provider's care would cause the child or another person serious mental or physical harm;
- (b) the intrusive procedure is specified in the Minister's approval;
- (c) if the child is sixteen years of age or more, the child consents to the use of the intrusive procedure or apparently does not have capacity; and
- (d) if the child is less than sixteen years of age, the child's parent or, where the child is in a society's lawful custody, the society,
  - (i) consents to the use of the intrusive procedure, or
  - (ii) is not immediately available,

the service provider may use or permit the use of the intrusive procedure in respect of the child, in accordance with the conditions and limitations set out in the Minister's approval, dur-

ing a period not exceeding seventy-two hours, without the approval of the review team, despite clause (2) (c).

(6) Where a service provider uses or permits the use of an intrusive procedure under subsection (5), the service provider shall seek the review team's approval as soon as possible, and in any event within seventy-two hours of the first use of the intrusive procedure, and shall not continue its use or permit its continued use in respect of the child unless the review team approves it. Idem

#### PSYCHOTROPIC DRUGS

**126.**—(1) A service provider shall not administer or permit the administration of a psychotropic drug to a child in the service provider's care without, Consents required for use of psychotropic drug

- (a) if the child is sixteen years of age or more, the child's consent; or
- (b) if the child is less than sixteen years of age, the consent of the child's parent or, where the child is in a society's lawful custody, the society's consent.

(2) A consent referred to in subsection (1) shall identify the psychotropic drug clearly and shall specify, Idem

- (a) what condition the psychotropic drug is intended to alleviate;
- (b) the range of intended dosages;
- (c) any risks and possible side effects associated with the psychotropic drug, and how they vary with different dosages; and
- (d) the frequency with which and the period of time during which the psychotropic drug is to be administered.

(3) Where, Emergency

- (a) a service provider believes on reasonable grounds that,
  - (i) delay in the administration of a psychotropic drug to a child in the service provider's care would cause the child or another person serious mental or physical harm, and

(ii) no less restrictive course of action would prevent the harm;

(b) if the child is sixteen years of age or more, the child apparently does not have capacity; and

(c) if the child is less than sixteen years of age, the child's parent or, where the child is in a society's lawful custody, the society, is not immediately available,

the service provider may administer or permit the administration of the psychotropic drug to the child during a period not exceeding seventy-two hours without the consent referred to in subsection (1).

Idem

(4) Where a service provider administers or permits the administration of a psychotropic drug under subsection (3), the service provider shall seek the consent referred to in subsection (1) as soon as possible, and in any event within seventy-two hours of the first administration of the psychotropic drug, and shall not continue its administration or permit its continued administration to the child unless the consent is given.

#### ADDITIONAL DUTY OF REVIEW TEAMS

Review of  
certain  
recommended  
procedures

**127.**—(1) Where it is recommended that a child in the care of a service provider who has established a review team undergo,

(a) medical or chemical experimentation;

(b) psychosurgery;

(c) non-therapeutic sterilization; or

(d) electro-convulsive therapy,

three members of the review team shall review the matter and advise the child's parent or, where the child is in a society's lawful custody, the society, and the service provider of the review team's opinion as to the appropriateness of the recommendation.

Panel to  
include  
medical  
practitioner

(2) One of the members of the review team acting under subsection (1) shall be a legally qualified medical practitioner.



## PROFESSIONAL ADVISORY BOARD

**128.**—(1) The Minister may establish a Professional Advisory Board, composed of physicians and other professionals who, Professional  
Advisory  
Board

- (a) have special knowledge in the use of intrusive procedures and psychotropic drugs;
- (b) have demonstrated an informed concern for the welfare and interests of children; and
- (c) are not employed by the Ministry.

(2) The Minister shall appoint one of the members of the Professional Advisory Board as its chairman. Chairman

(3) The Professional Advisory Board shall, at the Minister's request, Duties  
of  
Board

- (a) advise the Minister on,
  - (i) prescribing procedures as intrusive procedures, and
  - (ii) making, amending, suspending and revoking approvals under section 124;
- (b) investigate and review the use of intrusive procedures and psychotropic drugs and make recommendations to the Minister; and
- (c) review the practices and procedures of service providers with respect to,
  - (i) secure isolation,
  - (ii) intrusive procedures, and
  - (iii) psychotropic drugs,

and make recommendations to the Minister.

**129.** Any person may request that the Minister refer the matter of the use of secure isolation or an intrusive procedure in respect of a child, or the administration of a psychotropic drug to a child, to the Professional Advisory Board for investigation and review. Request  
for  
review

## PART VII

## ADOPTION

Interpretation

**130.**—(1) In this Part,

- (a) “birth parent”, when used in reference to a child, means a person who is the child’s parent at the time of the child’s birth;
- (b) “licensee” means the holder of a licence issued under Part IX (Licensing) to place children for adoption;
- (c) “relative”, when used in reference to a child, means the child’s grandparent, great-uncle, great-aunt, uncle or aunt, whether by blood, marriage or adoption;
- (d) “spouse” has the same meaning as in Parts I and II of the *Human Rights Code, 1981*.

1981, c. 53

Best  
interests  
of child

(2) Where a person is directed in this Part to make an order or determination in the best interests of a child, the person shall take into consideration those of the following circumstances of the case that he or she considers relevant:

- 1. The child’s physical, mental and emotional needs, and the appropriate care or treatment to meet those needs.
- 2. The child’s physical, mental and emotional level of development.
- 3. The child’s cultural background.
- 4. The religious faith, if any, in which the child is being raised.
- 5. Where the child is an Indian or a native person, the importance, in recognition of the uniqueness of Indian and native culture, heritage and traditions, of preserving the child’s cultural identity.
- 6. The importance for the child’s development of a positive relationship with a parent and a secure place as a member of a family.
- 7. The child’s relationships by blood or through an adoption order.

8. The importance of continuity in the child's care and the possible effect on the child of disruption of that continuity.
9. The child's views and wishes, if they can be reasonably ascertained.
10. The effects on the child of delay in the disposition of the case.
11. Any other relevant circumstance.

#### CONSENT TO ADOPTION

**131.**—(1) In this section, “parent”, when used in reference to a child, means each of, Interpretation

- (a) the child's mother;
- (b) an individual described in one of paragraphs 1 to 6 of subsection 8 (1) of the *Children's Law Reform Act*, unless it is proved on a balance of probabilities that he is not the child's natural father; R.S.O.1980,  
c. 68
- (c) the individual having lawful custody of the child;
- (d) an individual who, during the twelve months before the child is placed for adoption under this Part, has demonstrated a settled intention to treat the child as a child of his or her family, or has acknowledged parentage of the child and provided for the child's support;
- (e) an individual who, under a written agreement or a court order, is required to provide for the child, has custody of the child or has a right of access to the child; and
- (f) an individual who has acknowledged parentage of the child in writing to a society or under section 12 of the *Children's Law Reform Act*, R.S.O.1980,  
c. 68

but does not include a licensee or a foster parent.

(2) An order for the adoption of a child who is less than sixteen years of age, or is sixteen years of age or more but has not withdrawn from parental control, shall not be made without, Consent  
of parent,  
etc.

- (a) the written consent of every parent; or

- (b) where the child has been made a Crown ward under Part III (Child Protection), the written consent of a Director.

Idem

(3) A consent under clause (2) (a) shall not be given before the child is seven days old.

Idem

(4) Where a child is being placed for adoption by a society or licensee, a consent under clause (2) (a) shall not be given until,

- (a) the society or licensee has advised the parent of his or her right,

- (i) to withdraw the consent under subsection (8),

- (ii) to be informed, on his or her request, whether an adoption order has been made in respect of the child, and

- (iii) to participate in the voluntary disclosure register under section 158; and

- (b) the society or licensee has given the parent an opportunity to seek counselling and independent legal advice with respect to the consent.

Custody  
of child

(5) Where,

- (a) a child is being placed for adoption by a society or licensee;

- (b) every consent required under subsection (2) has been given and has not been withdrawn under subsection (8); and

- (c) the twenty-one day period referred to in subsection (8) has expired,

the rights and responsibilities of the child's parents with respect to the child's custody, care and control are transferred to the society or licensee, until the consent is withdrawn under subsection 133 (1) (late withdrawal with leave of court) or an order is made for the child's adoption under section 140.

Consent of  
person to  
be adopted

(6) An order for the adoption of a person who is seven years of age or more shall not be made without the person's written consent.



(7) A consent under subsection (6) shall not be given until the person has had an opportunity to obtain counselling and independent legal advice with respect to the consent.

Idem

(8) A person who gives a consent under subsection (2) or (6) may withdraw it in writing within twenty-one days after the consent is given.

Withdrawal of consent

(9) The court may dispense with a child's consent required under subsection (6) where the court is satisfied that,

Dispensing with child's consent

(a) obtaining the consent would cause the child emotional harm; or

(b) the child is not able to consent because of a developmental handicap.

(10) An adoption order shall not be made on the application of a person who is a spouse without the written consent of the other spouse.

Consent of applicant's spouse

(11) Where a person who gives a consent under clause (2) (a) is less than eighteen years of age, the consent is not valid unless the Official Guardian is satisfied that the consent is fully informed and reflects the person's true wishes.

Consents by minors: role of Official Guardian

(12) An affidavit of execution in the prescribed form shall be attached to a consent and a withdrawal of a consent under this section.

Affidavits of execution

(13) A consent required under this section that is given outside Ontario and whose form does not comply with the requirements of subsection (12) and the regulations is not invalid for that reason alone, if its form complies with the laws of the jurisdiction where it is given.

Form of foreign consents

**132.** The court may dispense with a consent required under section 131 for the adoption of a child, except the consent of the child or of a Director, where the court is satisfied that,

Dispensing with consent

(a) it is in the child's best interests to do so; and

(b) the person whose consent is required has received notice of the proposed adoption and of the application to dispense with consent, or a reasonable effort to give the notice has been made.

**133.—**(1) The court may permit a person who gave a consent to the adoption of a child under section 132 to withdraw

Late withdrawal of consent

the consent after the twenty-one day period referred to in subsection 132 (7) where the court is satisfied that it is in the child's best interests to do so.

Exception:  
child  
placed for  
adoption

- (2) Subsection (1) does not apply where,
- (a) the child has been placed with a person for adoption and remains in that person's care; and
  - (b) the placement is,
    - (i) registered under subsection 135 (6), or
    - (ii) with the child's parent, the child's relative or a spouse of the child's parent.

#### PLACEMENT FOR ADOPTION

Duty of  
society

**134.**—(1) A society shall make all reasonable efforts to secure the adoption of,

- (a) every child in the society's care and custody who has been made a Crown ward under Part III (Child Protection); and
- (b) every child who is referred to the society by another society for the purpose of adoption.

When  
society  
may place  
child for  
adoption

- (2) No society shall place a child for adoption until,
- (a) any outstanding order of access to the child made under subsection 55 (1) of Part III has been terminated;
  - (b) where the child is a Crown ward, the time for commencing an appeal of the order of Crown wardship or of an order under subsection 62 (1) of Part III (status review) has expired; or
  - (c) where the child is a Crown ward, any appeal of an order referred to in clause (b) has been finally disposed of or abandoned,

whichever is the latest.

Where child  
an Indian or  
native person

(3) Where a child to be placed for adoption is an Indian or a native person, the society shall give the child's band or native community thirty days written notice of its intention to place the child for adoption.

**135.**—(1) No person except a society or licensee shall,

- (a) place a child with another person for adoption; or
- (b) take, send or attempt to take or send a child who is a resident of Ontario out of Ontario to be placed for adoption.

Only societies and licensees may place children, etc.

(2) No person except a society or a licensee whose licence contains a term permitting the licensee to act under this subsection shall bring a child who is not a resident of Ontario into Ontario to be placed for adoption.

Only societies, etc., may bring children into Ontario

(3) No licensee except a licensee exempted under subsection (5) shall,

Licensee to notify Director of placement

- (a) place a child with another person for adoption; or
- (b) take, send or attempt to take or send a child who is a resident of Ontario out of Ontario to be placed for adoption,

without first notifying a Director of the proposed placement.

(4) No person shall receive a child for adoption, except from a society or from a licensee exempted under subsection (5), without first receiving a Director's approval of the placement under clause 136 (2) (a).

Director's approval required

(5) A Director may designate a licensee that is an agency as exempt from the requirements of subsections (3) and (4).

Designation of licensee

(6) A society or licensee who places a child with another person for adoption shall register the placement in the prescribed manner within thirty days of placing the child.

Placements to be registered

(7) Subsections (1), (2), (3), (4) and (6) do not apply to,

Exception: family adoptions

- (a) the placement for adoption of a child with the child's relative, the child's parent or a spouse of the child's parent; or
- (b) the taking or sending of a child out of Ontario for adoption by the child's relative, the child's parent or a spouse of the child's parent.

**136.**—(1) A licensee who notifies a Director of a proposed placement under subsection 135 (3) shall at the same time provide the Director with a report of an adoption homestudy of the person with whom placement is proposed,

Adoption homestudy

prepared by a person who, in the opinion of the Director or a local director, is qualified to make an adoption homestudy.

Director's  
approval

(2) A Director who receives a report under subsection (1) shall consider it and, as soon as possible,

- (a) approve the proposed placement; or
- (b) refuse to approve the placement and give notice of the refusal to the licensee and the person with whom placement is proposed.

Right to  
hearing

(3) Where a Director gives notice under clause (2) (b), the licensee and the person with whom placement is proposed are entitled to a hearing before the Board and sections 180, 182, 184 and 185 of Part IX (Licensing) apply with necessary modifications.

Placement  
outside  
Canada

(4) A Director shall not approve the proposed placement of a child outside Canada unless the Director is satisfied that a prescribed special circumstance justifies the placement.

Terms and  
conditions

(5) A Director may approve a proposed placement under clause (2) (b) subject to any terms and conditions that the Director considers appropriate, including supervision of the placement by,

- (a) a specified society, licensee or person; or
- (b) in the case of a placement outside Ontario, a specified child protection agency recognized in the jurisdiction of the placement.

Right to  
hearing

(6) Where a Director imposes a term or condition on an approval under subsection (5), the licensee and the person with whom placement is proposed are entitled to a hearing before the Children's Board and sections 181, 182, 184 and 185 of Part IX (Licensing) apply with necessary modifications.

Access  
orders  
terminate

**137.**—(1) Where a child is placed for adoption by a society or licensee, every order respecting access to the child is terminated, except an order made under Part III (Child Protection).

No inter-  
ference, etc.,  
with child  
in placement

(2) Where a child has been placed for adoption by a society or licensee and no adoption order has been made, no person shall,

- (a) interfere with the child; or



- (b) for the purpose of interfering with the child, visit or communicate with the child or with the person with whom the child has been placed.

#### DIRECTOR'S REVIEW

### 138.—(1) Where,

Review by  
Director

- (a) a society makes a decision refusing to place a child with a person, including a foster parent who is caring for the child, for adoption; or
- (b) a society or licensee makes a decision to remove a child who has been placed with a person for adoption,

a Director may review the decision of the society or licensee and may,

- (c) confirm the decision, giving written reasons for doing so; or
- (d) rescind the decision and do anything further that the society or licensee may do under this Part with respect to the child's placement.

(2) A Director who reviews a decision under subsection (1) shall take into account the importance of continuity in the child's care. Idem

**139.—**(1) Where a child has been placed for adoption under this Part, no order for the child's adoption has been made and,

Notice to  
Director

- (a) the person with whom the child is placed asks the society or licensee that placed the child to remove the child; or
- (b) the society or licensee proposes to remove the child from the person with whom the child was placed,

the society or licensee shall notify a Director.

(2) Where no order for a child's adoption has been made and a year has expired since, Idem

- (a) the earlier of the child's placement for adoption or the giving of the most recent consent under clause 131 (2) (a); or

- (b) the most recent review under subsection (3),

whichever is later, the society or licensee shall notify a Director, unless the child is a Crown ward.

Director's  
review

(3) A Director who receives notice under subsection (1) or (2) shall review the child's status and may, in the child's best interests,

- (a) where the child is in the care of the person with whom the child was placed for adoption, confirm the child's placement or do anything the society or licensee that placed the child may do with respect to the child's placement or further placement;
- (b) where the child was placed for adoption by a licensee, direct the licensee to place the child in the care and custody of a specified society;
- (c) where the child is in the care, custody and control of a society, direct the society to bring the child before the court under Part III to determine whether the child is in need of protection;
- (d) where the child leaves or is removed from the care of the person with whom the child was placed for adoption, do anything the society or licensee that placed the child may do with respect to the child's further placement; or
- (e) where a parent who gave consent under clause 131 (2) (a) and had charge of the child at the time the consent was given agrees to resume the child's care and custody, direct the society or licensee that placed the child to return the child to the parent.

Deemed  
withdrawal  
of consent

(4) Where a Director directs a society or licensee to return a child to a parent under clause (3) (e), the parent's consent under clause 131 (2) (a) shall be deemed to be withdrawn.

#### ADOPTION ORDERS

Adoption  
of child

**140.**—(1) The court may make an order for the adoption of a child who is less than sixteen years of age, or is sixteen years of age or more but has not withdrawn from parental control, and,

- (a) has been placed for adoption by a society or licensee;

- (b) was placed for adoption before the 15th day of June, 1979; or
- (c) has been placed for adoption by a person other than a society or licensee,

in the child's best interests, on the application of the person with whom the child is placed.

(2) The court may make an order for the adoption of a child, in the child's best interests, on the application of, Family adoption

- (a) a relative of the child;
- (b) the child's parent; or
- (c) the spouse of the child's parent.

(3) The court may make an order for the adoption of, Adoption of adult, etc.

- (a) a person eighteen years of age or more; or
- (b) a child who is sixteen years of age or more and has withdrawn from parental control,

on another person's application.

(4) An application under this section may only be made, Who may apply

- (a) by one individual; or
- (b) jointly, by two individuals who are spouses of one another.

(5) The court shall not make an order under this section for the adoption of, or on the application of, a person who is not a resident of Ontario. Residency requirement

**141.** The court shall not make an order under section 140 on the application of a person who is less than eighteen years of age unless the court is satisfied that special circumstances justify making the order. Where applicant a minor

**142.** Where the court has made an order, Where order not to be made

- (a) dispensing with a consent under section 132; or
- (b) refusing to permit the late withdrawal of a consent under subsection 133 (1),

the court shall not make an order under section 140 until,

- (c) the time for commencing an appeal of the order has expired; or
- (d) any appeal of the order has been finally disposed of or abandoned,

whichever is later.

Director's  
statement

**143.**—(1) Where an application is made for an order for the adoption of a child under subsection 140 (1), a Director shall, before the hearing, file a written statement with the court indicating that,

- (a) the child has resided with the applicant for at least six months and, in the Director's opinion, it would be in the child's best interests to make the order;
- (b) for specified reasons, in the Director's opinion it would be in the child's best interests to make the order although the child has resided with the applicant for less than six months; or
- (c) the child has resided with the applicant for at least six months and, in the Director's opinion, it would not be in the child's best interests to make the order.

Local  
director  
may make  
statement

(2) Where a child was placed by a society and has resided with the applicant for at least six months, the statement under subsection (1) may be made and filed by the local director.

Additional  
circumstances

(3) The statement under subsection (1) may refer to any additional circumstances that the Director or local director wishes to bring to the court's attention, and the Director or local director may attend at the hearing and make submissions.

Where  
recommen-  
dation  
negative

(4) Where the statement under subsection (1) indicates that, in the Director's or local director's opinion, it would not be in the child's best interests to make the order, a copy of the statement shall be filed with the court and served on the applicant at least thirty days before the hearing.

Report of  
child's  
adjustment

(5) The statement under subsection (1) shall be based on a report of the child's adjustment in the applicant's home, prepared by,



- (a) the society that placed the child or has jurisdiction where the child is placed; or
- (b) a person approved by the Director or local director.

(6) Where an application is made for an order for the adoption of a child under subsection 140 (2), the court may order that subsections (1), (3), (4) and (5) shall apply to the application. Family adoptions: court may require statement

**144.**—(1) An application for an adoption order shall be heard and dealt with in the county or district in which, Place of hearing

- (a) the applicant; or
- (b) the person to be adopted,

resides at the time the application is filed.

(2) Where the court is satisfied at any stage of an application for an adoption order that there is a preponderance of convenience in favour of conducting it in another county or district, the court may order that it be transferred to that other county or district and be continued as if it had been commenced there. Transfer of proceeding

**145.**—(1) An application for an adoption order shall be heard and dealt with in the absence of the public. Hearing in private

(2) No person shall have access to the court file concerning an application for an adoption order, except, Court files private

- (a) the court and authorized court employees;
- (b) the parties and their solicitors and agents; and
- (c) a Director and a local director.

(3) Where an application for an adoption order is not heard within twelve months of the day on which the applicant signed it, Stale applications

- (a) the court shall not hear the application unless the court is satisfied that it is just to do so; and
- (b) the applicant may make another application.

(4) No person, No right to notice

- (a) who has given a consent under clause 131 (2) (a) and has not withdrawn it;
- (b) whose consent has been dispensed with under section 132; or
- (c) who is a parent of a Crown ward who is placed for adoption,

is entitled to receive notice of an application under section 140.

Court may inquire, etc.

**146.**—(1) In a proceeding under this Part, the court may inquire and satisfy itself as to all relevant matters.

Power of court

(2) The court may, on its own initiative, summon a person to attend before it, testify and produce any document or thing, and may enforce obedience to the summons as if it had been issued under the *Family Law Reform Act*.

R.S.O.1980, c. 152

Duty of court

(3) The court shall not make an order for the adoption of a child under subsection 140 (1) or (2) unless the court is satisfied that,

- (a) every person who has given a consent under section 131 understands the nature and effect of the adoption order; and
- (b) every applicant understands and appreciates the special role of an adopting parent.

Participation of child

(4) Where an application is made for an order for the adoption of a child under subsection 140 (1) or (2), the court shall,

- (a) inquire into the child's capacity to understand and appreciate the nature of the application; and
- (b) consider the child's views and wishes, if they can be reasonably ascertained,

and where it is practical to do so shall hear the child.

Participation of adult, etc.

(5) Where an application is made for an order for the adoption of a person under subsection 140 (3), the court shall consider the person's views and wishes and, on request, hear the person.

Change of name

**147.**—(1) Where the court makes an order under section 140, the court may, at the request of the applicant or appli-

cants and, where the person adopted is twelve years of age or more, with the person's written consent,

- (a) change the person's surname to a surname that the person could have been given if he or she had been born to the applicant or applicants; and
- (b) change the person's given name.

(2) A child's consent to a change of name under subsection (1) is not required where the child's consent was dispensed with under subsection 131 (9). When child's consent not required

### INTERIM ORDERS

**148.**—(1) Where an application is made for an order for the adoption of a child under subsection 140 (1) or (2), the court, after considering the statement made under subsection 143 (1), may postpone the determination of the matter and make an interim order in the child's best interests placing the child in the applicant's care and custody for a specified period not exceeding one year. Interim order

(2) The court may make an order under subsection (1) subject to any terms and conditions that the court considers appropriate respecting, Terms and conditions

- (a) the child's maintenance and education;
- (b) supervision of the child; and
- (c) any other matter the court considers advisable in the child's best interests.

(3) An order under subsection (1) is not an adoption order. Not an adoption order

(4) Sections 131 and 132 (consents to adoption) apply to an order under subsection (1) with necessary modifications. Consents required

(5) Where an applicant takes up residence outside Ontario after obtaining an order under subsection (1), the court may nevertheless make an adoption order under subsection 140 (1) or (2) where the statement made under subsection 143 (1) indicates that, in the Director's or local director's opinion, it would be in the child's best interests to make the order. Departure from Ontario

**149.** An adoption order under subsection 140 (1) or (2) or an interim custody order under subsection 148 (1) may be Successive adoption orders

made in respect of a person who is the subject of an earlier adoption order.

#### APPEALS

Appeal:  
adoption  
order

**150.**—(1) An appeal from a court's order under section 140 may be made to the District Court by,

- (a) the applicant for the adoption order; and
- (b) the Director or local director who made the statement under subsection 143 (1).

Idem:  
dispensing  
with consent

(2) An appeal from a court's order under section 132 dispensing with a consent may be made to the District Court by,

- (a) the persons referred to in subsection (1); and
- (b) the person whose consent was dispensed with.

Idem:  
late  
withdrawal  
of consent

(3) An appeal from a court's order under subsection 133 (1) permitting the late withdrawal of a consent may be made to the District Court by,

- (a) the persons referred to in subsection (1); and
- (b) the person who gave the consent.

No  
extension  
of time  
for appeal

(4) No extension of the time for an appeal shall be granted.

Place of  
hearing

(5) An appeal under this section shall be heard in the county or district in which the order appealed from was made.

Hearing  
in private

(6) An appeal under this section shall be heard in the absence of the public.

#### EFFECT OF ADOPTION ORDER

Order  
final

**151.** An adoption order under section 140 is final and irrevocable, subject only to section 150 (appeals), and shall not be questioned or reviewed in any court by way of injunction, declaratory judgment, *certiorari*, *mandamus*, prohibition, *habeas corpus* or application for judicial review.

Interpretation

**152.**—(1) In this section, "adopted child" means a person who was adopted in Ontario.

Status  
of adopted  
child

(2) For all purposes of law, as of the date of the making of an adoption order,



- (a) the adopted child becomes the child of the adopting parent and the adopting parent becomes the parent of the adopted child; and
- (b) the adopted child ceases to be the child of the person who was his or her parent before the adoption order was made and that person ceases to be the parent of the adopted child, except where the person is the spouse of the adopting parent,

as if the adopted child had been born to the adopting parent.

(3) The relationship to one another of all persons, including the adopted child, the adopting parent, the kindred of the adopting parent, the parent before the adoption order was made and the kindred of that former parent shall for all purposes be determined in accordance with subsection (2).

How  
relationships  
determined

(4) In any will or other document made at any time before or after the day this section comes into force, and whether the maker of the will or document is alive on that day or not, a reference to a person or group or class of persons described in terms of relationship by blood or marriage to another person shall be deemed to refer to or include, as the case may be, a person who comes within the description as a result of an adoption, unless the contrary is expressed.

Reference  
in will or  
other  
document

(5) This section applies and shall be deemed always to have applied with respect to any adoption made under any Act heretofore in force, but not so as to affect,

Application  
of section

- (a) any interest in property or right of the adopted child that has indefeasibly vested before the date of the making of an adoption order; and
- (b) any interest in property or right that has indefeasibly vested before the day this section or a predecessor of this section comes into force.

(6) Subsections (2) and (3) do not apply for the purposes of the laws relating to incest and the prohibited degrees of marriage to remove a person from a relationship that would have existed but for those subsections.

Exception

**153.** An adoption effected according to the law of another jurisdiction, before or after the day this section comes into force, has the same effect in Ontario as an adoption under this Part.

Effect of  
foreign  
adoption

No order  
for access  
by birth  
parent, etc.

**154.** Where an order for the adoption of a child has been made under this Part no court shall make an order under this Part for access to the child by,

- (a) a birth parent; or
- (b) a member of a birth parent's family.

RECORDS, CONFIDENTIALITY  
AND DISCLOSURE

Parent  
to be  
informed  
on request

**155.** At the request of a person who gave a consent to adoption under clause 131 (2) (a) or whose consent required under that clause was dispensed with under section 132, any society or the licensee that placed the child for adoption shall inform the person whether an order has been made for the child's adoption.

Interpretation

**156.—**(1) In this section, "court" includes the District Court.

Papers to  
be sealed  
up

(2) Subject to subsection 158 (7), the documents used upon an application for an adoption order under this Part or a predecessor of this Part shall be sealed up and filed in the office of the court by the proper officer of the court and shall not be open for inspection except upon an order of the court or the written direction of a Director.

Transmission  
of order

(3) Within thirty days after the making of an adoption order under this Part, the proper officer of the court shall cause to be made a sufficient number of certified copies thereof under the seal of the proper certifying authority and shall transmit,

- (a) the original order to the adopting parent;
- (b) one certified copy to a Director;
- (c) one certified copy to the Registrar General, or, where the adopted child was born outside Ontario, two certified copies to the Registrar General; and
- (d) where the adopted child is a member of a band, one certified copy to the Registrar under the *Indian Act* (Canada).

R.S.C. 1970,  
c. 1-6

Adoption  
information  
confidential

**157.—**(1) Despite the provision of any other Act, no person shall inspect, remove, alter or permit the inspection, removal or alteration of information that relates to the adoption of a child and is kept,

- (a) by the Ministry;
- (b) by a society or licensee; or
- (c) in the register maintained under section 158,

or disclose or permit the disclosure of such information that the person obtained from the records of the Ministry, the records of a society or licensee, or the register maintained under section 158.

(2) Subsection (1) does not apply to,

Exceptions

- (a) the inspection or disclosure of information in accordance with section 158;
- (b) the inspection by or disclosure to the Minister, a Director or an employee of the Ministry who has a Director's written authority, of information kept by the Ministry or a society or licensee;
- (c) the inspection by or disclosure to an employee of a society or licensee, of information kept by the society or licensee;
- (d) the disclosure of information of a prescribed class to a person whose access to the information, in the Director's opinion, is necessary to protect any person's health; or
- (e) the release by a Director of a copy of an adoption order to a governmental authority that requires it to issue a birth certificate, passport or visa.

#### VOLUNTARY DISCLOSURE REGISTER

**158.**—(1) In this section,

Interpretation

- (a) “adopted child” means a person who was adopted in Ontario as a child;
- (b) “Director” means the person appointed under subsection (2);
- (c) “register” means the register maintained under subsection (3).

(2) The Minister may appoint an employee of the Ministry as Director for the purposes of this section. Director

Voluntary  
disclosure  
register

(3) The Director shall maintain a register for the purposes of this section.

Who may  
apply to  
be named  
in register

(4) An adopted child who has attained the age of eighteen years and a birth parent of an adopted child may each apply to a society to be named in the register.

Society  
to notify  
Director

(5) A society that receives an application under subsection (4) shall forthwith send a copy of the application to the Director.

Duty of  
Director

(6) Upon receiving a copy of an application made under subsection (4), the Director shall,

(a) enter the applicant's name in the register; and

(b) determine,

(i) where the applicant is an adopted child, whether a birth parent of the applicant is named in the register, or

(ii) where the applicant is a birth parent of an adopted child, whether the adopted child is named in the register.

Idem

(7) Where the Director,

(a) determines that an applicant's birth parent or an adopted child whose birth parent is the applicant, as the case may be, is named in the register; and

(b) obtains, subject to subsections (8), (9) and (10),

(i) the written consent of every person who became the adopted child's parent by an adoption order, and

(ii) written confirmation of the consent of the applicant and the birth parent or adopted child, as the case may be,

to the disclosure of information under this section,

the Director shall,

(c) obtain from the court copies of the documents referred to in subsection 156 (2); and



- (d) forward to the society the information in those documents and in the register that relates to the adoption.

(8) The consent of an adopting parent referred to in subclause (7) (b) (i) is not required where,

Where adopting parent's consent not required

- (a) the adopting parent is deceased;

- (b) the adopting parent has been declared a mentally incompetent person under the *Mental Incompetency Act*; or

R.S.O.1980, c. 264

- (c) after the adopted child's adoption by the adopting parent, the child was made a Crown ward under Part III (Child Protection) and the court did not make an order for access by the adopting parent.

(9) Where the birth parent has been declared a mentally incompetent person under the *Mental Incompetency Act*, the consent of the birth parent's committee shall be deemed to be the confirmation of the birth parent's consent referred to in subclause (7) (b) (ii).

Where birth parent mentally incompetent

(10) Where the Director determines that the applicant's birth parent or the adopted child whose birth parent is the applicant, as the case may be, is deceased, the consents and confirmation referred to in clause (7) (b) are not required.

Disclosure where birth parent or adopted child deceased

(11) A society that receives information under subsection (7) shall promptly make it available, with counselling, to the adopted child and to the birth parent, if living.

Duty of society

(12) A society shall provide guidance and counselling to birth parents and adopted children who are named or may wish to be named in the register.

Idem

(13) A person may,

Information in register confidential

- (a) inspect, remove, alter or permit the inspection, removal or alteration of information kept in the register; or

- (b) disclose or permit the disclosure of information that the person obtained from the register otherwise than under subsection (11),

only with the Director's written authority.

Disclosure  
by adopted  
child and  
birth parent

(14) An adopted child and a birth parent who receive information under subsection (11) may disclose it freely.

#### OFFENCES

No payments  
for adoption

**159.** No person, whether before or after a child's birth, shall give, receive or agree to give or receive a payment or reward of any kind in connection with,

- (a) the child's adoption or placement for adoption;
- (b) a consent under section 131 to the child's adoption;  
or
- (c) negotiations or arrangements with a view to the child's adoption,

except for,

- (d) the prescribed expenses of a licensee, or such greater expenses as are approved by a Director; and
- (e) proper legal fees and disbursements.

Offence

**160.**—(1) A person who contravenes subsection 135 (1), (2) or (3) (placement for adoption) and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation is guilty of an offence, whether an order is subsequently made for the child's adoption or not, and on conviction is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than two years, or to both.

Idem

(2) A person who contravenes subsection 135 (4) (receiving child) is guilty of an offence and on conviction is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than two years, or to both.

Idem

(3) A person who contravenes subsection 137 (2) (interference with child) is guilty of an offence and on conviction is liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than one year, or to both.

Idem

(4) A person who contravenes section 159 and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation is guilty of an offence and on conviction is liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than three years, or to both.

(5) A proceeding under subsection (1), (2) or (4) shall not be commenced after the expiration of two years after the date on which the offence was, or is alleged to have been, committed.

Limitation  
period

#### INJUNCTION

**161.**—(1) The Supreme Court may grant an injunction to restrain a person from contravening subsection 137 (2), on the society's or licensee's application.

Injunction

(2) The Supreme Court may vary or terminate an order made under subsection (1), on any person's application.

Variation,  
etc.

## PART VIII

## CONFIDENTIALITY OF AND ACCESS TO RECORDS

Interpretation

**162.** In this Part,

- (a) “family”, when used in reference to a person, means,
  - (i) the person’s parents and children, and
  - (ii) the person’s spouse within the meaning of Part II of the *Family Law Reform Act*;
- (b) “record”, when used in reference to a person, means all recorded information, regardless of physical form or characteristics, that,
  - (i) relates to the person,
  - (ii) is recorded in connection with the provision of an approved service, or a service purchased by an approved agency, to the person or a member of the person’s family, and
  - (iii) is under the control of a service provider.

Exception:  
information  
in existing  
records**163.**—(1) This Part does not apply to information recorded before the day this Part comes into force.Exception:  
certain kinds  
of records

- (2) This Part does not apply to a record,
  - (a) obtained by means of an order made under subsection 71 (3) of Part III (child abuse investigation);
  - (b) in the register maintained under subsection 72 (5) of Part III (child abuse register);
  - (c) that relates to the adoption of a child under Part VII;
  - (d) in the register maintained under subsection 158 (3) of Part VII (voluntary disclosure register);
  - (e) that relates to a patient and whose disclosure without the patient’s consent would contravene a regulation made under the *Health Disciplines Act*;

R.S.O.1980,  
c. 196



- (f) that is a clinical record within the meaning of subsection 29 (1) of the *Mental Health Act*;

R.S.O.1980,  
c. 262

- (g) that is a medical record kept by a hospital that is approved under the *Public Hospitals Act*.

R.S.O.1980,  
c. 410

#### DISCLOSURE OF RECORDS

**164.**—(1) No service provider or employee of a service provider shall disclose a person's record to any person, except in accordance with section 165 (disclosure with consent), 166 (disclosure without consent) or 167 (access by subject and parents) or subsection 171 (4) (review by Board).

Prohibition

(2) Subsection (1) does not prevent the disclosure of a person's record that is,

Exception

- (a) required or permitted by,

- (i) another Act or a regulation made under another Act, or

- (ii) an order of a court; or

- (b) permitted by the *Young Offenders Act* (Canada).

S.C. 1980-  
81-82-83,  
c. 110

**165.**—(1) A service provider may disclose the record of a child under the age of sixteen years, with the written consent of the child's parent or, where the child is in a society's lawful custody, the society's written consent.

Consent to  
disclosure:  
child under  
sixteen

(2) Subsection (1) does not apply to a record created in connection with the provision of counselling services to a child under section 29 of Part II (Voluntary Access to Services), which may be disclosed only with the child's written consent.

Exception:  
child's  
counselling  
records

(3) A service provider may disclose the record of a person who is sixteen years of age or older with that person's written consent.

Consent to  
disclosure:  
person over  
sixteen

(4) A consent given under subsection (1), (2) or (3) to the disclosure of a person's record shall specify,

Requirements  
for consent

- (a) what information is to be disclosed;
- (b) the purpose of the disclosure;
- (c) to whom the record is to be disclosed;

- (d) whether the consent authorizes the further disclosure of the record by the person referred to in clause (c), and, if so, to whom and for what purposes; and
- (e) the period of time during which the consent remains effective, unless revoked.

When  
revocation  
of consent  
effective

(5) The revocation of a consent given under subsection (1), (2) or (3) is effective when it is delivered to the service provider in writing or the service provider otherwise obtains actual notice of it.

Disclosure  
without  
consent

**166.**—(1) A service provider may disclose a person's record without any consent referred to in section 165,

- (a) to persons who provide approved services as employees or agents of the service provider;
- (b) to employees, officers and professional advisors of the service provider who require access to the person's record for the performance of their duties;
- (c) to a society, if the person is a child who is in the society's care under,
  - (i) an order made under Part III (Child Protection), or
  - (ii) a temporary care agreement or special needs agreement made under Part II (Voluntary Access to Services), unless the agreement provides otherwise;
- (d) to a peace officer, if the service provider believes on reasonable grounds that,
  - (i) failure to disclose the person's record is likely to cause the person or another person physical or emotional harm, and
  - (ii) the need for disclosure is urgent;
- (e) to a person who is providing medical treatment to the person whose record is concerned, if the service provider believes on reasonable grounds that,
  - (i) failure to disclose the record is likely to cause the person whose record is concerned physical or emotional harm, and

(ii) the need for disclosure is urgent; or

- (f) to a review team for the purposes of section 70 of Part III (Child Protection).

(2) A service provider may, with a Director's written approval obtained in accordance with the regulations, disclose a person's record to a person engaged in research, but that person shall not,

Idem:  
research

- (a) use or communicate information from the record for any purpose except research, academic pursuits or the compilation of statistical data; or
- (b) communicate any information that may have the effect of identifying a person whose record is disclosed.

(3) A service provider shall disclose a person's record without any consent referred to in section 165,

Mandatory  
disclosure

- (a) to a program supervisor; or
- (b) to a Director,

who requests its disclosure.

(4) A program supervisor or Director shall not use or communicate information from a person's record obtained under subsection (3) for any purpose outside the scope of his or her duties.

Prohibition

(5) A service provider who discloses a person's record under clause (1) (d) or (e) shall promptly give written notice of the disclosure to the person whose record was disclosed.

Notice of  
disclosure  
without  
consent

#### ACCESS TO RECORDS

**167.**—(1) Subject to subsection (2) and section 168, a person who is twelve years of age or older has a right to and shall on request be given access to,

Right of  
access to  
personal  
records

- (a) his or her own records;
- (b) the records of his or her child who is under the age of sixteen years; and
- (c) the records of a child who is in his or her lawful custody or charge and is under the age of sixteen years.

Exception:  
child's  
counselling  
records

(2) Clauses (1) (b) and (c) do not apply to a record created in connection with the provision of counselling services to a child under section 29 of Part II (Voluntary Access to Services), which may be disclosed to the child's parent only with the child's written consent.

Restriction  
by parent,  
etc.

(3) Any parent of a child, if the child is under the age of sixteen years, may designate specific information that is contained in the child's record and relates to the parent as information that shall not be disclosed to the child, and the service provider shall not disclose the designated information to the child.

Child's  
access to  
own records

(4) The consent of a child's parent is not required for the child's access to a record under subsection (1).

Where  
access  
may be  
refused

**168.**—(1) A service provider may refuse to give a person referred to in subsection 167 (1) access to all or part of his or her record where the person is a child under the age of sixteen years and the service provider is of the opinion that access to all or part of the record would cause the child physical or emotional harm.

Information  
that may be  
withheld

(2) A service provider may withhold from a person referred to in subsection 167 (1) the name of another person and other information relating to that other person where the service provider is of the opinion that disclosure is likely to result in physical or emotional harm to that other person.

Idem:  
informants

(3) A service provider may withhold from a person referred to in subsection 167 (1) the name of an individual who has provided information in the person's record but is not engaged in providing services.

Idem:  
assessments

(4) A service provider may withhold from a person referred to in subsection 167 (1) the contents of a medical, emotional, developmental, psychological, educational or social assessment performed by a person who is not employed by the service provider, but may not withhold that person's name.

Duty of  
service  
provider

**169.**—(1) Where a person referred to in subsection 167 (1) requests access to a record, the service provider shall, within thirty days of receiving the request,

- (a) give the person access to the record;
- (b) notify the person that the service provider refuses to give him or her access to part of the record, stating the reasons for the refusal, and give the person access to the rest of the record;



- (c) notify the person that the service provider refuses to give him or her access to the record, stating the reasons for the refusal; or
- (d) notify the person that this Part does not apply to the record or that the record does not exist, if that is the case.

(2) A notice of a refusal of access under clause (1) (b) or (c) shall contain a statement of the person's right to request a review of the matter under subsection 171 (1). Notice of right of review

**170.**—(1) A person who has a right to access to a record under subsection 167 (1) also has a right to have errors or omissions in the record corrected. Right to have record corrected

(2) Where a person referred to in subsection (1) requests that a service provider correct an error or omission in a record, the service provider shall, within thirty days of receiving the request, Duty of service provider

- (a) make the correction as requested, and give notice of the correction to every person to whom the service provider has disclosed the record;
- (b) notify the person that the service provider refuses to make the correction as requested, stating the reasons for the refusal, and note the request and response on the record; or
- (c) notify the person that this Part does not apply to the record or that the record does not exist, if that is the case.

(3) A notice of a refusal to make a correction under clause (2) (b) shall contain a statement of the person's right to request a review of the matter under subsection 171 (1). Notice of right of review

#### REVIEW

**171.**—(1) A person referred to in subsection 167 (1) or 170 (1) whose request for access to or correction of a record is refused in whole or in part may, within twenty days of receiving notice of the refusal, request that the Board review the matter. Right to review: refusal of access or correction

(2) A person who believes that a service provider may have disclosed his or her record without authority may, within twenty days of becoming aware of the possible unauthorized disclosure, request that the Board review the matter. Idem: unauthorized disclosure

Duty of  
Board

(3) Where the Board receives notice of a request for review under subsection (1) or (2), it shall review the matter, following the prescribed procedures, and may do so by holding a hearing.

Board may  
examine  
record

(4) In conducting a review requested under subsection (1) or (2), the Board may examine the record in question.

Decision  
of Board

(5) On completing a review requested under subsection (1), the Board may,

- (a) order the service provider to give the person access to all or part of the record;
- (b) order the service provider to make a correction to the record and give the notice referred to in clause 170 (2) (a); or
- (c) if it is satisfied that the refusal appealed from is justified, confirm the refusal,

and shall provide a copy of its decision to the person who requested the review, the service provider and the Minister.

## Idem

(6) On completing a review requested under subsection (2), the Board,

- (a) shall, unless it is satisfied that no disclosure or no unauthorized disclosure of the person's record took place, declare that the disclosure was unauthorized;
- (b) may order the service provider to change its procedures for the maintenance and disclosure of persons' records, or to desist from a particular disclosure practice; and
- (c) where it is satisfied that an unauthorized disclosure took place, may recommend to the Minister that the service provider's approval under Part I (Flexible Services), if any, be revoked or, where the service provider is a licensee, that the licence be revoked under Part IX (Licensing),

and shall provide a copy of its decision to the person who requested the review, the service provider and the Minister.

## GENERAL

**172.**—(1) Every disclosure of all or part of a person's record and every correction to a person's record shall be noted on and forms part of the record. Access, etc., to be noted on record

(2) Subsection (1) does not apply to routine use of a person's record by a service provider and the service provider's employees or, where the service provider is the Minister, the Minister's employees engaged in providing services. Exception

**173.** Where a service provider discloses a person's record in accordance with this Part, no action or other proceeding shall be instituted against the service provider or anyone acting under the service provider's authority, Protection from liability for disclosure

(a) if this Part requires the disclosure; or

(b) if this Part permits the disclosure and the service provider has reasonable grounds to believe the information contained in the record to be accurate.

**174.**—(1) Every service provider shall establish and follow a written code of procedure for the creation, maintenance and disclosure of persons' records. Code of record-keeping procedures

(2) A code of procedure referred to in subsection (1) shall contain, Idem

(a) a description of the types of information that may be recorded and the purposes for which information may be recorded;

(b) a requirement that information, wherever possible, be collected from or confirmed by the person to whom it relates;

(c) a requirement that no more information be recorded than is actually necessary for the provision of the service in question; and

(d) the prescribed provisions.

(3) Every service provider shall retain, store and destroy persons' records in accordance with the prescribed schedules. Retention, storage and destruction schedules

## PART IX

## LICENSING

Interpretation **175.** In this Part,

(a) “children’s residence” means,

(i) a parent model residence where five or more children not of common parentage, or

(ii) a staff model residence where three or more children not of common parentage,

live and receive residential care, and includes a foster home or other home or institution that is supervised or operated by a society, but does not include,

R.S.O. 1980,  
c. 389

(iii) a house licensed under the *Private Hospitals Act*,

R.S.O. 1980,  
c. 111

(iv) a day nursery as defined in the *Day Nurseries Act*,

1983, c. 10

(v) a recreational camp under the *Health Protection and Promotion Act, 1983*,

R.S.O. 1980,  
c. 202

(vi) a home for special care under the *Homes for Special Care Act*,

R.S.O. 1980,  
c. 129

(vii) a school or private school as defined in the *Education Act*,

(viii) a hostel intended for short term accommodation, or

(ix) a hospital that receives financial aid from the Government of Ontario;

(b) “non-profit agency” means a corporation without share capital that has objects of a charitable nature and,

R.S.O. 1980,  
c. 95

(i) to which Part III of the *Corporations Act* applies, or

(ii) that is incorporated by or under a general or special Act of the Parliament of Canada;



- (c) “parent model residence” means a residence where not more than two adult persons live and provide care for children on a continuous basis;
- (d) “staff model residence” means a residence where adult persons provide care for children on the basis of scheduled periods of duty.

#### WHERE LICENCE REQUIRED

**176.—**(1) No person shall,

- (a) establish, operate or maintain a children’s residence; or
- (b) provide, directly or indirectly, residential care for three or more children not of common parentage in places that are not children’s residences,

Licence required to operate children’s residence, etc.

except under the authority of a licence issued by a Director under this Part.

(2) No person other than a society shall place a child for adoption, except under the authority of a licence issued by a Director under this Part.

Idem: placement for adoption

(3) Subject to section 178, a person who applies for a licence in accordance with this Part and the regulations and pays the prescribed fee is entitled to be issued a licence by a Director, subject to any terms and conditions imposed by the Director.

Issuing licence

(4) Despite subsection (3),

Idem

- (a) a licence shall not be issued to a partnership or association of persons; and
- (b) a licence to place a child for adoption shall only be issued to an individual or a non-profit agency.

(5) Subject to section 179, a licensee who applies for renewal of the licence in accordance with this Part and the regulations and pays the prescribed fee is entitled to have the licence renewed by a Director, subject to any terms and conditions imposed by the Director.

Renewal of licence

(6) Where an applicant for a licence or renewal of a licence does not meet all the requirements for the issuing or renewal of the licence and requires time to meet them, a Director may, subject to such terms and conditions as the Director may

Provisional licence or renewal

prescribe, issue a provisional licence for the period that the Director considers necessary to give the applicant time to meet the requirements.

Not transferable

(7) A licence is not transferable.

Placements must be in accord with Act and regulations

(8) No licensee shall place a child in a residential placement except in accordance with this Act and the regulations.

#### POWERS OF PROGRAM SUPERVISOR

Powers of program supervisor

**177.**—(1) For the purpose of ensuring compliance with this Act and the regulations a program supervisor may, at all reasonable times, upon producing proper identification, enter,

- (a) the premises of a licensee;
- (b) a children's residence; or
- (c) a place where a child receives residential care,

and may inspect the facilities, the services provided, the books of account and the records relating to the services, and make copies of those books and records or remove them from the premises to copy them as may be reasonably required.

Offence

(2) No person shall hinder, obstruct or attempt to hinder or obstruct a program supervisor in the performance of the program supervisor's duties or give false information about the premises or services to a program supervisor.

Idem

(3) No licensee or person in charge of premises referred to in clause (1) (a), (b) or (c) shall refuse to give a program supervisor access to the books and records referred to in subsection (1) or refuse to give a program supervisor information about the premises or services that the program supervisor reasonably requires.

Regulations re exercise of power of entry

(4) A program supervisor shall exercise the power of entry set out in subsection (1) in accordance with the regulations.

#### REFUSAL AND REVOCATION

Grounds for refusal

**178.** A Director may refuse to issue a licence where, in the Director's opinion,

- (a) the applicant or an employee of the applicant, or, where the applicant is a corporation, an officer or director of the corporation is not competent to carry on the activity for which the licence is required in a

responsible manner in accordance with this Act and the regulations;

- (b) the past conduct of the applicant or an employee of the applicant or, where the applicant is a corporation, of an officer or director of the corporation, affords reasonable grounds for belief that the activity for which the licence is required will not be carried on in a responsible manner in accordance with this Act and the regulations; or
- (c) the premises in which the applicant proposes to establish, operate and maintain a children's residence or to provide residential care, as the case may be, do not comply with the requirements of this Part and the regulations.

**179.** A Director may refuse to renew or may revoke a licence where, in the Director's opinion,

Refusal to  
renew;  
revocation

- (a) the licensee or an employee of the licensee, or where the licensee is a corporation, an officer or director of the corporation has contravened or has knowingly permitted a person under his or her control or direction or associated with him or her to contravene,
  - (i) this Act or the regulations,
  - (ii) another Act, or the regulations made under another Act, that applies to the activity for which the licence is required, or
  - (iii) a term or condition of the licence;
- (b) the premises where the children's residence is located or the residential care is provided do not comply with the requirements of this Part and the regulations;
- (c) the activity for which the licence is required is carried on in a manner that is prejudicial to the children's health, safety or welfare;
- (d) a person has made a false statement in the application for the licence or for its renewal, or in a report or document required to be furnished by this Act or the regulations, or by another Act or the regulations made under another Act that applies to the activity for which the licence is required; or

- (e) a change has occurred in the employees, officers or directors of the applicant that would, if the applicant were applying for the licence in the first instance, afford grounds under clause 178 (b) for refusing to issue the licence.

#### HEARING BY BOARD

Notice of  
proposal

**180.**—(1) Where a Director proposes to refuse to issue a licence under section 178 or to refuse to renew or to revoke a licence under section 179, the Director shall cause notice of the proposal, together with written reasons, to be served on the applicant or licensee.

Request for  
hearing

(2) A notice under subsection (1) shall inform the applicant or licensee that he or she is entitled to a hearing by the Board if he or she mails or delivers to the Director and to the Board, within ten days after the notice under subsection (1) is served, a written request for a hearing.

Powers of  
Director  
where no  
hearing  
required

(3) Where an applicant or licensee does not require a hearing under subsection (2), the Director may carry out the proposal.

Powers of  
Board where  
hearing  
required

(4) Where an applicant or licensee requires a hearing under subsection (2), the Board shall appoint a time for and hold a hearing and may, on hearing the matter,

- (a) order the Director to carry out the proposal; or
- (b) order the Director to take such other action as the Board considers appropriate, in accordance with this Part and the regulations,

and the Board may substitute its opinion for that of the Director.

Review of  
terms of  
licence by  
Board

**181.**—(1) A licensee who is dissatisfied with the terms and conditions prescribed by a Director under subsection 176 (3), (5) or (6) is entitled to a hearing by the Board if he or she mails or delivers to the Director and to the Board, within fifteen days after receiving the licence, a written request for a hearing.

Powers of  
Board

(2) Where a licensee requires a hearing under subsection (1), the Board shall appoint a time for and hold a hearing and may, on hearing the matter,

- (a) confirm any or all of the terms and conditions;



- (b) strike out any or all of the terms and conditions; or
- (c) impose such other terms and conditions as the Board considers appropriate.

(3) For the purposes of subsection (1), a licensee shall be deemed to receive the licence on the tenth day after the day of its mailing, unless the licensee establishes that he or she did not receive it or did not, through absence, accident, illness or another cause beyond his or her control, acting in good faith, receive the licence until a later date.

Receipt of  
licence

**182.**—(1) The Board may extend the time fixed for requiring a hearing under subsection 180 (2) or 181 (1), either before or after its expiration, where,

Extension  
of time for  
requiring  
hearing

- (a) it appears to the Board that there are reasonable grounds for granting relief to the applicant or licensee; and
- (b) the Board is satisfied that the applicant or licensee has reasonable grounds to seek an extension,

and the Board may give such directions as it considers proper in connection with the extension.

(2) Subject to section 183, where a licensee has applied for renewal of the licence and paid the prescribed fee within the prescribed time or, if no time is prescribed, before the licence expires, the licence shall be deemed to continue,

Continuation  
of licence  
pending  
renewal

- (a) until the renewal is granted; or
- (b) where the licensee is served with notice that the Director proposes to refuse to grant the renewal, until the time for requiring a hearing has expired and, where a hearing is required, until the Board has made its decision.

**183.**—(1) A Director may, by causing notice to be served on a licensee, provisionally and without a hearing suspend the licence where, in the Director's opinion, the manner in which the children's residence is operated, residential care is provided or children are placed for adoption, as the case may be, is an immediate threat to the health, safety or welfare of the children.

Provisional  
suspension  
of licence

(2) A notice served under subsection (1) shall contain a statement of the grounds for suspending the licence.

Contents  
of notice

When  
suspension  
takes effect

(3) A provisional suspension takes effect on the date that the licensee receives the notice.

s. 180 (2-4)  
apply

(4) Where a notice is served under subsection (1), subsections 180 (2), (3) and (4) apply with necessary modifications.

Parties

**184.**—(1) The Director, the applicant or licensee who requires the hearing and any other persons that the Board specifies are parties to a proceeding under this Part.

Members  
with prior  
involvement

(2) A member of the Board who has taken part before a hearing in any investigation or consideration of its subject matter, including a review under section 171 of Part VIII (Confidentiality of and Access to Records) that relates to the applicant or licensee, shall not take part in the hearing.

Discussion  
of subject  
matter of  
hearing

(3) A member of the Board who takes part in a hearing shall not communicate with any person, except another member, a solicitor who is not the solicitor of any party, or an employee of the Board, about the subject matter of the hearing, unless all parties are notified and given an opportunity to participate.

When Board  
seeks  
independent  
legal advice

(4) The Board may seek independent legal advice about the subject matter of a hearing and, if it does so, shall disclose the nature of the advice to the parties to enable them to respond.

Examination  
of  
documentary  
evidence

(5) A party to a proceeding under this Part shall be given an opportunity, before the hearing, to examine any written or documentary evidence that will be produced and any report whose contents will be given in evidence at the hearing.

Recording of  
evidence

(6) The evidence taken before the Board at a hearing shall be recorded.

Only  
members  
at hearing to  
participate  
in decision,  
etc.

(7) No member of the Board shall participate in a decision of the Board under this Part unless he or she was present throughout the hearing and heard the evidence and argument of the parties and, unless the parties consent, the Board shall not make a decision under this Part unless all the members who were present at the hearing participate in the decision.

Final decision  
of  
Board within  
ninety days  
R.S.O. 1980,  
c. 484

(8) Despite section 21 of the *Statutory Powers Procedure Act*, the Board shall make a final decision and notify the parties of it within ninety days from the day the Board receives the applicant's or licensee's request for a hearing under subsection 180 (2) or 181 (1).

## APPEAL

**185.**—(1) An appeal lies to the Divisional Court from the Board's decision under this Part. Appeal

(2) Where notice of an appeal is served under this section, the Board shall forthwith file with the Registrar of the Supreme Court the record of the proceeding in which the decision appealed from was made. Record to be filed in Supreme Court

(3) The Minister is entitled to be heard, by counsel or otherwise, on the argument of an appeal under this section. Minister entitled to be heard

## DELIVERY OF LICENCE AND RECORDS

**186.**—(1) A licensee whose licence is revoked or who ceases to carry on the activity for which the licence is required shall deliver up to the Minister the licence and all the records in the licensee's possession or control that relate to the children to whom services were being provided. Records and licence to be handed over to Minister

(2) Where a licence to operate a children's residence or to provide residential care is suspended or revoked, the parent of every child in the children's residence or other place where residential care is provided shall arrange for the child's removal from the residence or other place as soon as is practicable, having regard to the child's best interests, and the Minister may assist in finding an alternative placement for the child. Removal of children

## OCCUPATION BY MINISTER

**187.**—(1) The Minister may, where a Director's proposal to revoke or not to renew a licence under subsection 180 (1) or notice of provisional suspension under subsection 181 (1) has been served on a licensee who operates a children's residence or provides residential care and the matter has not yet been finally disposed of, apply without notice to the District Court for an order, Order for Minister's occupation

- (a) authorizing the Minister to occupy and operate the children's residence or the premises where the residential care is provided, pending the outcome of the proceeding until alternative accommodation may be found for the children who are being cared for; and
- (b) directing the sheriff to assist the Minister as may be necessary in occupying the premises.

Where  
District  
Court may  
make order

(2) The District Court may make an order referred to subsection (1) where it is satisfied that the health, safety or welfare of the children being cared for require it.

Interim  
management  
R.S.O. 1980,  
c. 148

(3) Where an order has been made under subsection (2), the Minister may, despite sections 25 and 41 of the *Expropriations Act*, immediately occupy and operate or arrange for the occupation and operation of the premises for a period not exceeding six months.

#### INJUNCTIONS

Injunction

**188.**—(1) A Director may apply to the Supreme Court for an order enjoining any person from,

- (a) contravening subsection 176 (1) (licence requirement); or
- (b) carrying on an activity for which a licence is required while the licence is provisionally suspended under section 183.

Idem

(2) Any person may apply to the Supreme Court for an order varying or discharging an order made under subsection (1).

#### OFFENCES

Offence

**189.**—(1) Every person who,

- (a) contravenes subsection 176 (1);
- (b) contravenes a term or condition of a licence relating to the maximum number of children to be cared for in a children's residence or other place where residential care is provided under the authority of a licence;
- (c) causes a child to be cared for in a children's residence operated by a person who is not licensed under this Part, or in another place where residential care is provided by a person who is required to be but is not licensed to provide residential care under this Part; or
- (d) is a child's parent or a person under a legal duty to provide for the child and permits the child to be cared for in a children's residence or other place referred to in clause (c),



and every director, officer or employee of a corporation who authorizes, permits or concurs in such an act by the corporation is guilty of an offence and on conviction is liable to a fine of not more than \$1,000 for each day on which the offence continues or to imprisonment for a term of not more than one year, or to both.

(2) Every person who,

Idem

- (a) knowingly contravenes subsection 177 (2) or (3) (obstructing program supervisor, etc.);
- (b) knowingly furnishes false information in an application under this Part or in a statement, report or return required to be furnished under this Part or the regulations; or
- (c) fails to comply with an order or direction made by a court under this Part,

and every director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention, furnishing or failure by the corporation is guilty of an offence and on conviction is liable to a fine of not more than \$2,000.

#### CHILDREN'S SERVICES REVIEW BOARD

**190.**—(1) The Children's Services Review Board is continued, composed of the prescribed number of members appointed by the Lieutenant Governor in Council, and has the powers and duties given to it by this Act and the regulations made under this Part.

Children's  
Services  
Review  
Board

(2) The Lieutenant Governor in Council may appoint a member of the Board as chairman and may appoint one or more other members as vice-chairmen.

Chairman  
and vice-  
chairmen

(3) A member of the Board shall hold office for the prescribed term.

Term

(4) The prescribed number of members of the Board are a quorum.

Quorum

(5) The chairman and vice-chairmen and the other members of the Board shall be paid the *per diem* allowances determined by the Lieutenant Governor in Council and are entitled to their reasonable and necessary travelling and living expenses while attending meetings or otherwise engaged in the work of the Board.

Remuneration

## PART X

## INDIAN AND NATIVE CHILD AND FAMILY SERVICES

**Interpretation**      **191.** In this Part, “customary care” means the care and supervision of an Indian or native child by a person who is not the child’s parent, according to the custom of the child’s band or native community.

**Designation of native communities**      **192.** The Minister may designate a community, with the consent of its representatives, as a native community for the purposes of this Act.

**Agreements with bands and native communities**      **193.** The Minister may make agreements with bands and native communities, and any other parties whom the bands or native communities choose to involve, for the provision of services.

**Designation of child and family service authority**      **194.—(1)** A band or native community may designate a body as an Indian or native child and family service authority.

**Agreements, etc.**      **(2)** Where a band or native community has designated an Indian or native child and family service authority, the Minister,

- (a) shall, at the band’s or native community’s request, enter into negotiations for the provision of services by the child and family service authority;
- (b) may enter into agreements with the child and family service authority and, if the band or native community agrees, any other person, for the provision of services; and
- (c) may designate the child and family service authority as a society under subsection 16 (2) of Part I (Flexible Services).

**Subsidy for customary care**      **195.** Where a band or native community declares that an Indian or native child is being cared for under customary care, a society or agency may grant a subsidy to the person caring for the child.

**Notice before entering reserve**  
R.S.C. 1970, c. I-6      **196.—(1)** No person, except a peace officer, shall enter a reserve as defined in the *Indian Act* (Canada) to exercise a power under Part III (Child Protection) or to provide a service under that Part without first giving reasonable notice to the band.

(2) Despite subsection (1), a child protection worker who believes on reasonable and probable grounds that a child's health and safety may be at risk during the time required for notice under subsection (1) may enter the reserve without notice, but shall give notice within twenty-four hours of entering the reserve. Exception

**197.** A society or agency that provides services or exercises powers under this Act with respect to Indian or native children shall regularly consult with their bands or native communities about the provision of the services or the exercise of the powers and about matters affecting the children, including, Consultation with bands and native communities

- (a) the apprehension of children and the placement of children in residential care;
- (b) the placement of homemakers and the provision of other family support services;
- (c) the preparation of plans for the care of children;
- (d) status reviews under Part III (Child Protection);
- (e) voluntary care and special needs agreements under Part II (Voluntary Access to Services);
- (f) adoption placements;
- (g) the establishment of emergency houses; and
- (h) any other matter that is prescribed.

## PART XI

## REGULATIONS

Regulations:  
Part I  
(Flexible  
Services)

**198.**—(1) The Lieutenant Governor in Council may make regulations for the purposes of Part I,

1. prescribing additional powers and duties of Directors and program supervisors;
2. prescribing reports to be made and information to be furnished under subsection 6 (5), their form and the intervals at which they are to be made or furnished;
3. governing the exercise of the power of entry set out in subsection 7 (1);
4. governing the management and operation of approved agencies or any class of them;
5. governing the provision of approved services or any class of them;
6. exempting designated approved agencies or approved services or any class of them from any provision of this Act or the regulations for a specified period or periods;
7. governing the accommodation, facilities and equipment to be provided,
  - i. in buildings in which approved services are provided, and
  - ii. in the course of the provision of approved services;
8. further defining “service”, “child development service”, “child treatment service”, “child welfare service”, “community support service” and “young offenders service”;
9. governing the establishment, management, operation, location, construction, alteration and renovation of buildings, or any class of them, in which approved services are provided;



10. prescribing procedures and conditions of eligibility for the admission of children to and their discharge from places where approved services are provided;
11. prescribing the qualifications, powers and duties of persons employed in providing approved services or any class of approved services;
12. governing the residential placement of children and prescribing procedures for placements, discharge, assessments and case management;
13. requiring and prescribing medical and other related or ancillary services for the care and treatment of children and other persons in places where services or any class of them are provided;
14. governing applications by agencies for approval under subsections 9 (1) and 10 (1) and establishing criteria for approval;
15. governing applications by approved agencies for payments under this Part, prescribing the method, time, manner, terms and conditions of payments and providing for the suspension and withholding of payments and for the making of deductions from payments;
16. prescribing the manner of computing the amount of financial assistance for the purposes of sections 9 and 10, prescribing classes of payments for the purposes of those sections and determining the amounts of payments;
17. requiring approved agencies to provide the prescribed information to the prescribed persons, and prescribing the information and the persons;
18. prescribing the accounts and records to be kept by approved agencies, the claims, returns and reports to be made and budgets to be submitted to the Minister and the methods, time and manner in which they shall be made or submitted;
19. requiring service providers, or any class of service providers, to keep records, and prescribing the form and content of those records;
20. providing for the recovery, by an approved agency or by the Minister, from the person or persons in

whose charge a child is or has been or from the estate of that person or persons of amounts paid by the agency for the child's care and maintenance, and prescribing the circumstances and the manner in which such a recovery may be made;

21. providing for the recovery of payments made to approved agencies under this Part and the regulations;
22. prescribing provisions to be included in the by-laws of approved agencies, or any class of them, for the purpose of subsection 14 (2);
23. prescribing the number of band or native community representatives on the boards of directors of agencies or any class of them, the manner of their appointment and their terms, for the purpose of subsection 14 (3);
24. prescribing forms and providing for their use;
25. prescribing fees or classes of fees that may be charged for services and the terms and conditions under which a fee may be charged;
26. prescribing the number of municipal representatives on the boards of directors of societies or any class of them, the manner of their appointment and their terms, for the purpose of section 19;
27. providing for an executive committee of the board of directors of a society, its composition, quorum, powers and duties;
28. prescribing the manner of determining the amounts of payments under subsections 20 (1) and (2);
29. providing for the establishment of a child welfare review committee and prescribing its practices and procedures;
30. establishing a procedure for reviewing any amount payable to a society under subsections 20 (1) and (2);
31. providing for payments by the Minister to reimburse a municipality for all or any part of an increase in its financial obligations to a society under this Part and prescribing classes of such pay-

ments and the terms and conditions under which such a payment or class of payments may be made;

32. governing the construction, alteration, renovation, extension, furnishing and equipping of homes operated or supervised by societies, other than children's residences as defined in Part IX (Licensing), where residential care is provided to children.

(2) A regulation made under paragraph 22, 23 or 26 of subsection (1) (prescribed provisions in agency by-laws, band or native community representatives, municipal representatives) may be general or specific in its application. Idem

(3) The Minister may prescribe, Idem

- (a) standards of services; and
- (b) procedures and practices to be followed by societies,

for the purposes of subsection 16 (4).

**199.** The Lieutenant Governor in Council may make regulations for the purposes of Part II, Regulations:  
Part II  
(Voluntary  
Access to  
Services)

- (a) defining "counselling";
- (b) prescribing provisions to be contained in agreements made under section 30 (temporary care agreements), section 31 (special needs agreements) and section 32 (sixteen and seventeen year olds);
- (c) requiring that residential placements with or by service providers be made in accordance with written agreements, and prescribing their form and contents;
- (d) prescribing practices, procedures and further duties for advisory committees;
- (e) further defining "special need" and "developmental handicap".

**200.** The Lieutenant Governor in Council may make regulations for the purposes of Part III, Regulations:  
Part III  
(Child  
Protection)

- (a) governing the exercise of the powers of entry set out in subsections 41 (5) and (14);

- (b) assigning to a Director any powers, duties or obligations of the Crown with respect to Crown wards;
- (c) prescribing the care and maintenance that may be provided to a former Crown ward under subsection 68 (2), and the terms and conditions on which the care and maintenance may be provided;
- (d) prescribing the form in which reports are to be made under clause 72 (3) (b);
- (e) respecting the manner in which the register referred to in subsection 72 (5) is to be kept;
- (f) requiring the removal of a name from the register referred to in subsection 72 (5), or the amendment of the register, under specified circumstances, and specifying those circumstances.

Regulations:  
Part IV  
(Young  
Offenders)

**201.** The Lieutenant Governor in Council may make regulations for the purposes of Part IV,

- (a) governing the establishment, operation, maintenance, management and use of places of temporary detention, open custody and secure custody and other services and programs provided under subsection 86 (1);
- (b) governing the establishment and operation of and the accommodation, equipment and services to be provided in any premises or class of premises established, operated, maintained or designated for the purposes of the federal Act or for providing services or programs under subsection 86 (1);
- (c) prescribing additional duties and functions of,
  - (i) probation officers, and
  - (ii) provincial directors;
- (d) prescribing the qualifications of probation officers;
- (e) prescribing additional duties and functions of persons in charge of places of temporary detention, open custody and secure custody;
- (f) prescribing reports to be made and information to be furnished under section 88, their form and the intervals at which they are to be made or furnished;



- (g) governing the conduct, discipline, rights and privileges of young persons in places of temporary detention, open custody or secure custody or any class of them or in a service or program provided under subsection 86 (1);
- (h) prescribing procedures for the admission of young persons to and their discharge from places of temporary detention, open custody or secure custody or any class of them or premises in which a service or program is provided under subsection 86 (1);
- (i) prescribing classes of payment by way of provincial aid for the establishment, operation or maintenance of places of temporary detention, open custody or secure custody, the methods of determining the payments, the manner and time of making them, the terms and conditions of such payments and the circumstances under which such payments may be suspended or withheld or deductions may be made from them;
- (j) prescribing the number of members of the Board, their terms of office and the number of members that is a quorum;
- (k) prescribing additional powers, duties and procedures of the Board;
- (l) governing the exercise of the power of entry given by a warrant issued under subsection 94 (4);
- (m) respecting any matter considered necessary or advisable to carry out effectively the intent and purpose of Part IV.

**202.** The Lieutenant Governor in Council may make regulations for the purposes of Part V,

Regulations:  
Part V  
(Rights of  
Children)

- (a) governing internal complaints procedures to be established under section 105;
- (b) establishing procedures for reviews under section 106;
- (c) prescribing additional functions of the Office of Child and Family Service Advocacy.

**203.** The Lieutenant Governor in Council may make regulations for the purposes of Part VI,

Regulations:  
Part VI  
(Extra-  
ordinary  
Measures)

- (a) prescribing procedures for the admission of children to and their discharge from secure treatment programs;
- (b) prescribing standards for secure treatment programs;
- (c) prescribing standards for secure isolation rooms;
- (d) prescribing procedures to be followed when a child is placed in or released from a secure isolation room;
- (e) prescribing the frequency of reviews under subsection 121 (6);
- (f) prescribing matters to be reviewed and prescribing additional reports under section 122;
- (g) prescribing procedures as intrusive procedures;
- (h) prescribing the intervals at which reports are to be made by review teams under subsection 123 (4);
- (i) prescribing forms and requiring their use.

Regulations:  
Part VII  
(Adoption)

**204.** The Lieutenant Governor in Council may make regulations for the purposes of Part VII,

- (a) prescribing the form of an affidavit of execution for the purposes of subsection 131 (12);
- (b) prescribing the manner in which placements are to be registered under subsection 135 (6);
- (c) prescribing special circumstances for the purposes of subsection 136 (4) (placement outside Canada);
- (d) prescribing forms and providing for their use;
- (e) prescribing classes of information for the purposes of clause 157 (2) (d) (disclosure by Director);
- (f) prescribing expenses that may be charged under clause 159 (d), classes of such expenses and the terms and conditions under which such expenses or classes of expenses may be charged.

Regulations:  
Part VIII  
(Confidentiality of  
and Access  
to Records)

**205.** The Lieutenant Governor in Council may make regulations for the purposes of Part VIII,

- (a) prescribing the manner in which a Director's approval is to be obtained under subsection 166 (2) (disclosure for research);
- (b) prescribing review procedures for the Board under subsection 171 (3);
- (c) prescribing provisions for the purposes of subsection 174 (2) (service providers' codes of procedure);
- (d) prescribing retention, storage and destruction schedules for the purposes of subsection 174 (3).

**206.** The Lieutenant Governor in Council may make regulations for the purposes of Part IX,

Regulations:  
Part IX  
(Licensing)

- (a) governing the establishment, management, operation and use of children's residences, and other premises where residential care is provided under the authority of a licence;
- (b) defining "common parentage" for the purposes of clause 175 (a) and clause 176 (1) (b);
- (c) governing the issuing, renewal and expiry of licences and prescribing fees payable by an applicant for a licence or its renewal;
- (d) governing the exercise of the power of entry set out in subsection 177 (1);
- (e) governing the establishment of and the accommodation, facilities, equipment and services to be provided in,
  - (i) children's residences, and
  - (ii) other premises where residential care is provided under the authority of a licence,or any class of them;
- (f) exempting designated,
  - (i) children's residences,
  - (ii) other premises where residential care is provided under the authority of a licence, or
  - (iii) persons placing children for adoption,

or any class of them, from any provision of this Part or the regulations for a prescribed period, and prescribing the period;

- (g) prescribing the accounts and records to be kept by licensees;
- (h) prescribing the qualifications, powers and duties of persons supervising children in,
  - (i) children's residences, or
  - (ii) other premises where residential care is provided under the authority of a licence,

or any class of them;

- (i) governing procedures for the admission to and discharge of children from,
  - (i) children's residences, or
  - (ii) other premises where residential care is provided under the authority of a licence,

or any class of them;

- (j) requiring the operators of children's residences or persons who provide residential care or place children for adoption under the authority of a licence to provide the prescribed information and to make the prescribed returns and reports, and prescribing the information, returns and reports;
- (k) prescribing the number of members of the Board, their terms of office and the number of members that is a quorum;
- (l) prescribing additional powers, duties and procedures of the Board;
- (m) governing the placement of children for adoption;
- (n) prescribing rules and standards governing the placement of children by licensees for adoption;
- (o) providing for the inspection of the records of persons licensed to place children for adoption;



- (p) governing the qualifications of persons or classes of persons employed by persons licensed to place children for adoption;
- (q) requiring persons licensed to place children for adoption to be bonded or to submit letters of credit in the prescribed form and terms and with the prescribed collateral security, prescribing the form, terms and collateral security and providing for the forfeiture of bonds and letters of credit and the disposition of the proceeds;
- (r) prescribing forms and providing for their use.

**207.** The Lieutenant Governor in Council may make regulations for the purposes of Part X,

Regulations:  
Part X  
(Indian and  
Native Child  
and Family  
Services)

- (a) exempting an Indian or native child and family service authority, a band or native community or specified persons or classes of persons, including persons caring for children under customary care, from any provision of this Act or the regulations;
- (b) prescribing matters requiring consultation between societies or agencies and bands or native communities for the purposes of clause 197 (h).

## PART XII

## TRANSITION AND REPEALS

**208.** Subclause 1 (c) (i) of the *Charitable Institutions Act*, being chapter 64 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

- 1984, c. ...
- (i) a children's residence under Part IX (Licensing) of the *Child and Family Services Act*, 1984 or premises approved under subsection 10 (1) of Part I (Flexible Services) of that Act.

**209.**—(1) The *Child Welfare Act*, being chapter 66 of the Revised Statutes of Ontario, 1980, paragraph 2 of the Schedule to the *Revised Statutes Amendment Act, 1981*, being chapter 66 and section 17 of the *Municipal Conflict of Interest Act, 1983*, being chapter 8, are repealed.

Transition

(2) Despite subsection (1),

- (a) a children's aid society that is approved by the Lieutenant Governor in Council under subsection 6 (1) of the *Child Welfare Act* on the day this section comes into force shall be deemed to be an approved agency and to have been designated as a society under subsection 16 (2) of Part I (Flexible Services) for all the functions set out in subsection 16 (3) of that Part;
- (b) a licence issued or renewed under the said Act that is in effect on the day this section comes into force continues in effect under Part IX (Licensing) until the term for which it was issued expires or until it is otherwise terminated under that Part;
- (c) the said Act continues to apply to a proceeding commenced under Part II (Protection and Care of Children) of the said Act before the day this section comes into force; and
- (d) the said Act continues to apply to an application for an adoption order in respect of a child who is placed for adoption before the day this section comes into force.

**210.**—(1) The *Children's Institutions Act*, being chapter 67 of the Revised Statutes of Ontario, 1980, is repealed.

Transition

(2) Despite subsection (1), an approval under the said Act that is in effect on the day this section comes into force contin-

ues in effect under Part I (Flexible Services) until it is terminated under that Part or until a new approval is given under that Part.

**211.**—(1) The *Children's Residential Services Act*, being chapter 71 of the Revised Statutes of Ontario, 1980, is repealed.

(2) Despite subsection (1), a licence issued or renewed under the said Act that is in effect on the day this section comes into force continues in effect under Part IX (Licensing) until the term for which it was issued expires or until it is otherwise terminated under that Part. Transition

**212.**—(1) The *Children's Mental Health Services Act*, being chapter 69 of the Revised Statutes of Ontario, 1980, is repealed.

(2) Despite subsection (1), an approval under the said Act that is in effect on the day this section comes into force continues in effect under Part I (Flexible Services) until it is terminated under that Part or until a new approval is given under that Part. Transition

**213.**—(1) Clause 47 (1) (a) of the *Courts of Justice Act, 1984*, being chapter 11, is repealed and the following substituted therefor:

(a) shall be deemed to be and shall sit as the Provincial Offences Court,

(i) for the purpose of dealing with young persons as defined in the *Provincial Offences Act*, and R.S.O. 1980,  
c. 400

(ii) for the purposes of Part III (Child Protection) and Part VII (Adoption) of the *Child and Family Services Act, 1984*; and 1984, c. ...

(2) Section 70 of the said Act is amended by adding thereto the following subsection:

(1a) A proceeding in the Provincial Offences Court under Part III (Child Protection) or Part VII (Adoption) of the *Child and Family Services Act, 1984* shall be conducted in the Provincial Court (Family Division) or, in the Judicial District of Hamilton-Wentworth, in the Unified Family Court, sitting as the Provincial Offences Court. Sittings  
1984, c. ...

**(3) Clause 75 (1) (a) of the said Act is repealed and the following substituted therefor:**

(a) shall be deemed to be and shall sit as the Provincial Offences Court,

(i) for the purpose of dealing with young persons as defined in the *Provincial Offences Act*, and

(ii) for the purposes of Part III (Child Protection) and Part VII (Adoption) of the *Child and Family Services Act, 1984*.

R.S.O. 1980,  
c. 400

1984, c. ...

**214.—(1) Clause 1 (c) of the *Day Nurseries Act*, being chapter 111 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:**

(c) “Board” means the Children’s Services Review Board continued under Part IX (Licensing) of the *Child and Family Services Act, 1984*.

1984, c. ...

**(2) Subclause 1 (d) (v) of the said Act is repealed.**

**(3) Subsection 13 (5) of the said Act is repealed and the following substituted therefor:**

(5) Sections 182, 184 and 185 of Part IX of the *Child and Family Services Act, 1984* apply with necessary modifications to proceedings before the Board, to the powers of the Board under this Act and to appeals therefrom.

Application  
of 1984,  
c. ...

**215. Subsection 52 (1) of the *Health Insurance Act*, being chapter 197 of the Revised Statutes of Ontario, 1980, is amended by striking out “a children’s mental health centre or an approved children’s mental health centre under the *Children’s Mental Health Services Act*” in the third, fourth and fifth lines.**

**216.—(1) Subclauses 1 (d) (iii) and (iv) of the *Homes for Retarded Persons Act*, being chapter 201 of the Revised Statutes of Ontario, 1980, are repealed and the following substituted therefor:**

(iii) premises approved under subsection 10 (1) of Part I (Flexible Services) of the *Child and Family Services Act, 1984*, a children’s residence licensed under Part IX (Licensing) of that Act or a foster home within the meaning of that Act.

1984, c. ...



(2) Subclauses 1 (d) (i) and (viii) of the said Act are repealed.

(3) Section 8 of the said Act is amended by striking out “the *Child Welfare Act*” in the thirteenth and fourteenth lines and inserting in lieu thereof “Part III (Child Protection) of the *Child and Family Services Act, 1984*”.

**217.**—(1) Sections 1 to 8 and subsections 9 (1), (2) and (3) of the *Young Offenders Implementation Act, 1984*, being 1984, c. ... chapter -, are repealed.

(2) Despite subsection (1), services and programs established under subsection 3 (1) of the said Act on or before the day this section comes into force are continued under subsection 86 (1) of Part IV (Young Offenders). Transition

**218.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commence-  
ment

**219.** The short title of this Act is the *Child and Family Services Act, 1984*. Short title



# Bill 77

## **An Act respecting the Protection and Well-being of Children and their Families**

The Hon. F. Drea

*Minister of Community and Social Services*



*1st Reading*      May 18th, 1984

*2nd Reading*      June 20th, 1984

*3rd Reading*

*Royal Assent*

*(Reprinted as amended by the Committee of the Whole House)*

## EXPLANATORY NOTE

The Bill is an extensive revision and consolidation of all the statutes dealing with children's services that the Ministry of Community and Social Services administers, except the *Day Nurseries Act*. It contains twelve distinct Parts as well as an introductory declaration of principles.

*Part I* (Flexible Services) deals in a uniform and comprehensive way with the funding and delivery of children's services and the administration of the Act, incorporating provisions from several existing statutes. It also gives the Minister take-over and revocation powers.

*Part II* (Voluntary Access to Services) deals with services (including care under temporary care and special needs agreements) given on a voluntary basis rather than under a court order. While services to children generally require parental consent, children over twelve may obtain counselling services without parental involvement.

Part II also provides for the establishment of Residential Placement Advisory Committees to review institutional placements and placements of children twelve or older who object to their placement. These children may obtain a further review by the Children's Services Review Board if not satisfied with the results of the first review.

*Part III* (Child Protection) is a revision of Part II of the *Child Welfare Act*. Some of the major changes are:

1. The definitions of "child in need of protection" and "child's best interests" are revised and expanded.
2. Children's aid societies are required to establish internal review procedures to handle complaints.
3. Abuse reporting requirements are expanded and clarified, and societies are required to refer cases of possible abuse to review teams for their recommendations.
4. The court may make an order restraining a particular person's access to a child who has been found to be in need of protection.

*Part IV* (Young Offenders) provides for the implementation of the *Young Offenders Act* (Canada) and for the establishment of services and programs in connection with that Act and the *Provincial Offences Act*. It replaces the *Young Offenders Implementation Act, 1984*.

*Part V* (Rights of Children) contains a bill of rights for children in residential care, prohibits the locking up of children except as Part IV (Young Offenders) and Part VI (Extraordinary Measures) specifically authorize, and provides for the creation of an Office of Child and Family Service Advocacy.

*Part VI* (Extraordinary Measures) sets out procedures for the admission of children with mental disorders to secure treatment facilities and regulates the use of secure isolation, intrusive measures and psychotropic drugs in respect of children receiving care.

*Part VII* (Adoption) is a revision of Part III (Adoption) of the *Child Welfare Act* (except its licensing provisions). Some of the major changes are:

1. Single, divorced and widowed persons and couples who live together in a conjugal relationship are placed on the same footing, with respect to adoption, as married couples.
2. Foster parents who wish to adopt their foster child may have a Director review the matter.



3. Birth parents must be informed of their rights and given an opportunity to seek counselling and legal advice before consenting to their child's adoption.
4. The court may not make access orders in favour of birth parents and their relatives once an adoption order is made.

*Part VIII* (Confidentiality of and Access to Records) controls the disclosure of personal records created and kept by service providers in the course of providing services to children and families. Subject to specific exceptions, such records may not be disclosed without the consent of the individuals concerned, and individuals have a general right of access to their own records.

*Part IX* (Licensing) is a revision of the licensing provisions contained in the *Children's Residential Services Act* and Part III (Adoption) of the *Child Welfare Act*.

*Part X* (Indian and Native Child and Family Services) provides for the involvement of Indian bands and native communities in child and family services to their own members and gives recognition to customary care.

*Part XI* (Regulations) contains regulation making powers.

*Part XII* (Transition and Repeals) contains repeals and consequential amendments.



**Bill 77****1984**

## An Act respecting the Protection and Well-being of Children and their Families

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1. The purposes of this Act are,**

Declaration  
of  
principles

- (a) as a paramount objective, to promote the best interests, protection and well-being of children;
- (b) to recognize that while parents often need help in caring for their children, that help should give support to the autonomy and integrity of the family unit and, wherever possible, be provided on the basis of mutual consent;
- (c) to recognize that the least restrictive or disruptive course of action that is available and is appropriate in a particular case to help a child or family should be followed;
- (d) to recognize that children's services should be provided in a manner that,
  - (i) respects children's needs for continuity of care and for stable family relationships, and
  - (ii) takes into account physical and mental developmental differences among children;
- (e) to recognize that, wherever possible, services to children and their families should be provided in a manner that respects cultural, religious and regional differences; and
- (f) to recognize that Indian and native people should be entitled to provide, wherever possible, their own child and family services, and that all services to Indian and native children and families should be provided in a manner that recognizes their culture, heritage and traditions and the concept of the extended family.

French  
language  
services

**2.—**(1) Service providers shall, where appropriate, make services to children and their families available in the French language.

Duties of  
service  
providers

(2) Service providers shall ensure,

- (a) that children and their parents have an opportunity where appropriate to be heard and represented when decisions affecting their interests are made and to be heard when they have concerns about the services they are receiving; and
- (b) that decisions affecting the interests and rights of children and their parents are made according to

clear, consistent criteria and are subject to procedural safeguards.

#### INTERPRETATION

### 3.—(1) In this Act,

Interpretation

1. “agency” means a corporation;
2. “approved agency” means an agency that is approved under subsection 8 (1) of Part I (Flexible Services);
3. “approved service” means a service provided,
  - i. under subsection 7 (1) of Part I or with the support of a grant or contribution made under subsection 7 (2) of that Part,
  - ii. by an approved agency, or
  - iii. under the authority of a licence;
4. “band” has the same meaning as in the *Indian Act* (Canada); R.S.C. 1970,  
c. I-6
5. “Board” means the Children’s Services Review Board continued under Part IX (Licensing);
6. “child” means a person under the age of eighteen years;
7. “child development service” means a service for a child with a developmental or physical handicap, for the family of a child with a developmental or physical handicap, or for the child and the family;
8. “child treatment service” means a service for a child with a mental or psychiatric disorder, for the family of a child with a mental or psychiatric disorder, or for the child and the family;
9. “child welfare service” means,
  - i. a residential or non-residential service, including a prevention service,
  - ii. a service provided under Part III (Child Protection),

iii. a service provided under Part VII (Adoption),  
or

iv. individual or family counselling;

10. “community support service” means a support service or prevention service provided in the community for children and their families;

11. “court” means the Provincial Court (Family Division) or the Unified Family Court;

12. “developmental handicap” means a condition of mental impairment present or occurring in a person’s formative years that is associated with limitations in adaptive behaviour;

13. “Director” means a Director appointed under subsection 5 (1) of Part I (Flexible Services);

14. “foster care” means the provision of residential care to a child, by and in the home of a person who,

i. receives compensation for caring for the child, except under the *Family Benefits Act*, the *General Welfare Assistance Act*, or the regulations made under either of them, and

ii. is not the child’s parent or a person with whom the child has been placed for adoption under Part VII,

and “foster home” and “foster parent” have corresponding meanings;

R.S.O. 1980,  
cc. 151, 188

15. “Indian” has the same meaning as in the *Indian Act* (Canada);

16. “licence” means a licence issued under Part IX (Licensing), and “licensed” and “licensee” have corresponding meanings;

17. “local director” means a local director appointed under section 16 of Part I (Flexible Services);

18. “Minister” means the Minister of Community and Social Services;

R.S.C. 1970,  
c. 1-6



19. "native community" means a community designated by the Minister under section 192 of Part X (Indian and Native Child and Family Services);
20. "native person" means a person who is a member of a native community but is not a member of a band, and "native child" has a corresponding meaning;
21. "order" includes a refusal to make an order;
22. "prescribed" means prescribed by the regulations;
23. "program supervisor" means a program supervisor appointed under subsection 5 (2) of Part I (Flexible Services);
24. "regulations" means the regulations made under this Act;
25. "residential service" means boarding, lodging and associated supervisory, sheltered or group care provided for a child away from the home of the child's parent, and "residential care" and "residential placement" have corresponding meanings;
26. "service" means,
  - i. a child development service,
  - ii. a child treatment service,
  - iii. a child welfare service,
  - iv. a community support service, or
  - v. a young offenders service;
27. "service provider" means,
  - i. the Minister,
  - ii. an approved agency,
  - iii. a society,
  - iv. a licensee, or

- v. a person who provides an approved service or provides a service purchased by the Minister or an approved agency,

but does not include a foster parent;

- 28. "society" means an approved agency designated as a children's aid society under subsection 15 (2) of Part I (Flexible Services);
- 29. "young offenders service" means a service provided under Part IV (Young Offenders) or under a program established under that Part.

Idem:  
"parent"

(2) In this Act, a reference to a child's parent shall be deemed to be a reference to,

- (a) both parents, where both have custody of the child;
- (b) one parent, where that parent has lawful custody of the child or the other parent is unavailable or unable to act as the context requires; or
- (c) another individual, where that individual has lawful custody of the child,

except where this Act provides otherwise.

#### CONSENTS AND PARTICIPATION IN AGREEMENTS

Interpretation

**4.—**(1) In this section,

- (a) "capacity" means the capacity to understand and appreciate the nature of a consent or agreement and the consequences of giving, withholding, or revoking the consent or making, not making or terminating the agreement; and
- (b) "nearest relative", when used in reference to a person who is a child, means a person with lawful custody of the child, and when used in reference to a person who is not a child, has the same meaning as in the *Mental Health Act*.

R.S.O. 1980,  
c. 262

Elements of  
valid consent  
or  
agreement,  
etc.

(2) A person's consent or revocation of a consent or participation in or termination of an agreement under this Act is valid if, at the time the consent is given or revoked or the agreement is made or terminated, the person,

- (a) has capacity;

- (b) is reasonably informed as to the nature and consequences of the consent or agreement, and of alternatives to it;
- (c) gives or revokes the consent or executes the agreement or notice of termination voluntarily, without coercion or undue influence; and
- (d) has had a reasonable opportunity to obtain independent advice.

(3) A person's nearest relative may give or revoke a consent or participate in or terminate an agreement on the person's behalf if it has been determined on the basis of an assessment, not more than one year before the nearest relative acts on the person's behalf, that the person does not have capacity. Where person lacks capacity

(4) Subsection (3) does not apply to a consent under section 131 (consents to adoption) of Part VII (Adoption) or to a parent's consent referred to in clause 37 (2) (1) (child in need of protection) of Part III (Child Protection). Exception

(5) A person's consent or revocation of a consent or participation in or termination of an agreement under this Act is not invalid by reason only that the person is less than eighteen years old. Consent, etc., of minor

## PART I

## FLEXIBLE SERVICES

## DIRECTORS AND PROGRAM SUPERVISORS

Appointment  
of Director

5.—(1) The Minister may appoint any person as a Director to perform any or all of the duties and functions and exercise any or all of the powers of a Director under this Act and the regulations.

Appointment  
of program  
supervisor

(2) The Minister may appoint any person as a program supervisor to perform any or all of the duties and functions and exercise any or all of the powers of a program supervisor under this Act and the regulations.

Limitations,  
etc., on  
appointments

(3) The Minister may set out in an appointment made under this section any conditions or limitations to which it is subject.

Remuneration  
and expenses  
R.S.O. 1980,  
c. 418

(4) The remuneration and expenses of a person appointed under this section who is not a public servant under the *Public Service Act* shall be fixed by the Minister and shall be paid out of legislative appropriations.

Reports and  
information

(5) A service provider shall,

- (a) make the prescribed reports and furnish the prescribed information to the Minister, in the prescribed form and at the prescribed intervals; and
- (b) make a report to the Minister whenever the Minister requests it, in the form and containing the information specified by the Minister.

Powers of  
program  
supervisor

6.—(1) For the purpose of ensuring compliance with this Act and the regulations a program supervisor may, at all reasonable times, upon producing proper identification, enter premises where an approved service is provided, inspect the facilities, the service provided, the books of account and the records relating to the service, and make copies of those books and records or remove them from the premises to copy them as may be reasonably required.

Offence

(2) No person shall hinder, obstruct or attempt to hinder or obstruct a program supervisor in the performance of the program supervisor's duties or knowingly give false information about an approved service to a program supervisor.

Idem

(3) No service provider or person in charge of premises where an approved service is provided shall refuse to give a

program supervisor access to the books and records referred to in subsection (1) or refuse to give a program supervisor information about the approved service that the program supervisor reasonably requires.

(4) A program supervisor shall exercise the power of entry set out in subsection (1) in accordance with the regulations.

Regulations  
re exercise  
of power of  
entry

#### APPROVALS AND FUNDING

**7.—**(1) The Minister may,

Provision  
of services  
directly or  
by purchase

- (a) provide services and establish, operate and maintain facilities for the provision of services; and
- (b) make agreements with persons, municipalities and agencies for the provision of services,

and may make payments for those services and facilities out of legislative appropriations.

(2) The Minister may make grants and contributions, out of legislative appropriations, to any person, organization or municipality for consultation, research and evaluation with respect to services and for the provision of services.

Grants and  
contributions  
for services,  
consultation,  
etc.

**8.—**(1) Where the Minister is satisfied that an agency is, with financial assistance under this Part and the regulations, financially capable of establishing, maintaining and operating a service and that its affairs are carried on under competent management in good faith, the Minister may approve the agency to provide that service.

Approval of  
agencies

(2) Where the Minister intends to approve an agency to provide a service under subsection (1), the Minister may enter into an agreement with the agency for the establishment of the service.

Funding for  
establishment  
of services

(3) Where the Minister approves an agency to provide a service under subsection (1), the Minister may give the agency financial and other assistance, in accordance with the regulations.

Financial  
assistance,  
etc.

(4) The Minister's approval under subsection (1) shall be deemed to have retroactive effect if the Minister so specifies.

Effective  
date

**9.—**(1) Where the Minister is satisfied that premises are suitable for providing a service, the Minister may approve all or any part of the premises for the provision of the service by an approved agency and may give the agency financial and

Approval of  
premises for  
provision  
of services



other assistance in accordance with the regulations, for the maintenance and operation of the premises and the provision of the service.

Approval  
may relate  
to all or  
part of  
building,  
etc.  
Effective  
date

(2) The Minister's approval under subsection (1) may specify a building, a group of buildings, part of a building or a location in a building as the approved premises.

(3) The Minister's approval of premises under subsection (1) shall be deemed to have retroactive effect if the Minister so specifies, but it shall not be deemed to take effect on a day before the Minister's approval of the agency concerned becomes effective under section 8.

Terms and  
conditions

**10.**—(1) The Minister may impose terms and conditions on an approval given under subsection 8 (1) or 9 (1) and, upon reasonable written notice to the approved agency, may vary, remove or amend the terms and conditions or impose new terms and conditions.

Duty of  
Director

(2) A Director shall review any objections from an approved agency which has received notice under subsection (1).

Transfer  
of assets

(3) An approved agency shall not transfer or assign any of its assets acquired with financial assistance from the Province of Ontario, except in accordance with the regulations.

Services  
to persons  
over  
eighteen

(4) The Minister may,

- (a) provide services under clause 7 (1) (a);
- (b) make agreements for the provision of services under clause 7 (1) (b);
- (c) make grants and contributions for the provision of services under subsection 7 (2);
- (d) approve agencies for the provision of services under subsection 8 (1);
- (e) approve premises for the provision of services under subsection 9 (1),

to persons who are not children, and to their families, as if those persons were children.

Co-ordinating  
or advisory  
groups

**11.** The Minister may make agreements with persons, organizations or municipalities for the establishment, support

and operation of co-ordinating or advisory groups or committees, may make payments for the purpose out of legislative appropriations and may give other assistance for the purpose.

**12.** The Minister may, as a condition of making a payment under this Part or the regulations, require the recipient of the funds to secure them by way of mortgage, lien, registration of agreement or in such other manner as the Minister determines.

Security for  
payment of  
funds

**13.—**(1) An approved agency shall file a certified copy of its by-laws and of any amendment to them with the Minister forthwith after they are made.

By-laws of  
approved  
agency

(2) The by-laws of an approved agency shall contain the prescribed provisions.

Idem

(3) An approved agency that provides services to Indian or native children and families shall have the prescribed number of band or native community representatives on its board of directors, appointed in the prescribed manner and for the prescribed terms.

Band or  
native  
community  
represent-  
atives

(4) An employee of an approved agency shall not be a member of the agency's board of directors.

Employee  
may  
not sit on  
board

**14.** No approved agency shall place a child in a residential placement except in accordance with this Act and the regulations.

Placements  
must comply  
with Act and  
regulations

#### CHILDREN'S AID SOCIETIES

**15.—**(1) In this section, "prescribed" means prescribed in a regulation made by the Minister under subsection 197 (4) of Part XI (Regulations).

Interpretation

(2) The Minister may designate an approved agency as a children's aid society for a specified territorial jurisdiction and for any or all of the functions set out in subsection (3), may impose terms and conditions on a designation and may vary, remove or amend the terms and conditions or impose new terms and conditions at any time, and may at any time amend a designation to provide that the society is no longer designated for a particular function set out in subsection (3) or to alter the society's territorial jurisdiction.

Designation  
of children's  
aid society

(3) The functions of a children's aid society are to,

Functions of  
society

- (a) investigate allegations or evidence that children who are under the age of sixteen years or are in the

society's care or under its supervision may be in need of protection;

- (b) protect, where necessary, children who are under the age of sixteen years or are in the society's care or under its supervision;
- (c) provide guidance, counselling and other services to families for protecting children or for the prevention of circumstances requiring the protection of children;
- (d) provide care for children assigned or committed to its care under this Act;
- (e) supervise children assigned to its supervision under this Act;
- (f) place children for adoption under Part VII; and
- (g) perform any other duties given to it by this or any other Act.

Prescribed standards, etc.

(4) A society shall,

- (a) provide the prescribed standard of services in its performance of its functions; and
- (b) follow the prescribed procedures and practices.

By-laws require approval

(5) A by-law and an amendment to a by-law of a society do not come into force until they are approved by the Minister.

Protection from personal liability

(6) No action shall be instituted against an officer or employee of a society for an act done in good faith in the execution or intended execution of the person's duty or for an alleged neglect or default in the execution in good faith of the person's duty.

Appointment of local director

**16.** Every society shall appoint a local director with the prescribed qualifications, powers and duties.

Duties of Director with respect to societies

**17.—(1)** A Director,

- (a) shall advise and supervise societies;
- (b) shall inspect or direct and supervise the inspection of the operation and records of societies;

- (c) shall exercise the powers and duties of a society in any area in which no society is functioning;
- (d) shall inspect or direct and supervise the inspection of places in which children in the care of societies are placed; and
- (e) shall ensure that societies provide the standard of services and follow the procedures and practices required by subsection 15 (4).

(2) A Director may designate a place as a place of safety, and may designate a class of places as places of safety, for the purposes of Part III (Child Protection).

Director may designate places of safety

**18.** The board of directors of a society shall include the prescribed number of municipal representatives, appointed in the prescribed manner and for the prescribed terms.

Municipal representatives

**19.—(1)** In this section and in section 20, “municipality” means the corporation of a county, city, or separated town or a district, metropolitan or regional municipality, but does not include a city or separated town in a district, metropolitan or regional municipality, and in a territorial district means the corporation of a city, town, village or improvement district.

Interpretation

(2) The Minister shall pay to every society out of legislative appropriations an amount determined in accordance with the regulations.

Payments by Minister

(3) A municipality shall pay to the society having jurisdiction in the area of that municipality an amount, determined in accordance with the regulations, of the part of the society’s estimated expenditures, as approved by the Minister, that is referable to the municipality.

Payments by municipalities

(4) A society’s estimated expenditures shall be determined and shall be approved by the Minister in accordance with the regulations.

How society’s estimates determined

(5) The part of a society’s estimated expenditures that is referable to a municipality shall be determined in accordance with the regulations.

How municipal share determined

(6) An amount payable to a society under subsection (2) or (3), including advances on expenditures before they are incurred, shall be paid at the times and in the manner determined by the Minister.

Manner of payment



Power to  
make levies

**20.**—(1) The council of a municipality shall pass by-laws for the levying of the amounts necessary to meet the liability imposed under subsection 19 (3) and may pass by-laws to afford to a society other assistance that the council considers advisable.

Society  
deemed  
to be a  
local board  
R.S.O. 1980,  
c. 348; 1983,  
c. 8

(2) A society shall be deemed to be a local board of each municipality in which it has jurisdiction for the purposes of the *Ontario Municipal Employees Retirement System Act* and the *Municipal Conflict of Interest Act, 1983*.

#### AGREEMENTS WITH OTHER GOVERNMENTS

Minister may  
make  
agreements  
with other  
governments

**21.** The Minister may, with the approval of the Lieutenant Governor in Council, make agreements on behalf of the Government of Ontario with the Crown in right of Canada and with the Crown in right of any other province of Canada respecting services under this Act or the care or protection of children.

#### REVOCATION AND TAKE-OVER POWERS

Powers of  
Minister

**22.**—(1) Where the Minister believes on reasonable grounds that,

- (a) an approved agency is not providing services in accordance with this Act or the regulations or in accordance with any term or condition imposed on the approval under subsection 8 (1) or 9 (1) or, in the case of a society, on the designation under subsection 15 (2);
- (b) a director, officer or employee of an approved agency has contravened or knowingly permitted any person under his or her control and direction to contravene any provision of this Act or the regulations or any term or condition imposed on the approval under subsection 8 (1) or 9 (1) or, in the case of a society, on the designation under subsection 15 (2);
- (c) approval of the agency under subsection 8 (1) or of the premises under subsection 9 (1) would be refused if it were being applied for in the first instance; or
- (d) in the case of a society, the society is not able to or fails to perform any or all of its functions under section 15, or fails to perform any or all of its functions in any part of its territorial jurisdiction,



the Minister may,

- (e) revoke or suspend the approval; or
- (f) in the case of a society,
  - (i) revoke or suspend the designation under subsection 15 (2),
  - (ii) remove any or all of the members of the board of directors and appoint others in their place, or
  - (iii) operate and manage the society in the place of the board of directors.

(2) Where the Minister proposes to act under clause (1) (e) or (f), the Minister shall serve notice of the proposal and written reasons for it on the approved agency, unless the agency has requested that the Minister so act or has consented to the Minister's proposal.

Notice of  
proposal

(3) A notice under subsection (2) shall inform the agency that it is entitled to a hearing under this section if the agency mails or delivers to the Minister, within sixty days after the notice under subsection (2) is served, a written request for a hearing.

Request for  
hearing

(4) Where the agency does not require a hearing under subsection (3), the Minister may carry out the proposal stated in the Minister's notice under subsection (2) without a hearing.

Where  
agency  
does not  
request  
hearing

(5) Where the agency requires a hearing under subsection (3),

Hearing

- (a) if the Minister proposes to act under clause (1) (e) only, the Minister; and
- (b) in all other cases, the Lieutenant Governor in Council,

shall appoint one or more persons not employed by the Ministry to hear the matter and recommend whether the Minister should carry out the proposal.

(6) Sections 17, 18, 19 and 20 of the *Statutory Powers Procedure Act* do not apply to a hearing under this section.

R.S.O. 1980,  
c. 484,  
ss. 17-20  
do not apply

Report to  
Minister

(7) The person or persons appointed under subsection (5) shall hold a hearing and make a report to the Minister setting out,

- (a) recommendations as to the carrying out of the proposal; and
- (b) the findings of fact, any information or knowledge used in making the recommendations and any conclusions of law arrived at that are relevant to the recommendations,

and shall provide a copy of the report to the agency.

Minister's  
decision

(8) After considering a report made under this section, the Minister may carry out the proposal and shall give notice of the Minister's decision to the agency with reasons.

Provisional  
suspension

(9) Despite subsection (2), the Minister, by notice to the agency and without a hearing, may provisionally exercise any of the powers set out in clauses (1) (e) and (f) where it is necessary to do so, in the Minister's opinion, to avert an immediate threat to the public interest or to a person's health, safety or welfare and the Minister so states in the notice, with reasons, and thereafter the Minister shall cause a hearing to be held and subsections (3) to (8) apply with necessary modifications.

Minister's  
order to  
cease activity

**23.**—(1) Where the Minister is of the opinion, upon reasonable grounds, that an activity carried on, or the manner of carrying on an activity, in the course of the provision of an approved service is causing or is likely to cause harm to a person's health, safety or welfare, the Minister may by order require the service provider to suspend or cease the activity and may take such other action as the Minister deems to be in the best interests of the persons receiving the approved service.

Notice of  
proposal

(2) Where the Minister proposes to make an order requiring the suspension or cessation of an activity under subsection (1), the Minister shall serve notice of the proposal and written reasons for it on the service provider, and subsections 22 (3) to (8), except clause (5) (b), apply with necessary modifications.

Where order  
may be made  
immediately

(3) Despite subsection (2), the Minister, by notice to the service provider and without a hearing, may require that the service provider immediately suspend or cease the activity where the continuation of the activity is, in the Minister's opinion, an immediate threat to the public interest or to a person's health, safety or welfare and the Minister so states in the

notice, with reasons, and thereafter the Minister shall cause a hearing to be held and subsections 22 (3) to (8), except clause (5) (b), apply with necessary modifications.

**24.**—(1) Where the Minister operates and manages a society under subclause 22 (1) (f) (iii), the Minister has all the powers of its board of directors. Minister has powers of board

(2) Without restricting the generality of subsection (1), where the Minister operates and manages a society under subclause 22 (1) (f) (iii), the Minister may, Idem

- (a) carry on the society's business;
- (b) enter into contracts on the society's behalf;
- (c) arrange for bank accounts to be opened in the society's name, and authorize persons to sign cheques and other documents on the society's behalf;
- (d) appoint or dismiss employees of the society; and
- (e) make by-laws.

(3) Without restricting the generality of subsection (1), where the Minister operates and manages a society under subclause 22 (1) (f) (iii), the Minister may, Occupation and operation of premises

- (a) despite sections 25 and 41 of the *Expropriations Act*, immediately occupy and operate, or arrange for the occupation and operation by a person or organization designated by the Minister, of any premises occupied or used by the society for the provision of approved services; or R.S.O. 1980, c. 148
- (b) apply without notice to the District Court for an order directing the sheriff to assist the Minister as may be necessary in occupying the premises.

(4) The Minister shall not occupy and operate premises under subsection (3) for a period exceeding one year without the society's consent, but the Lieutenant Governor in Council may extend the period from time to time. Maximum period

#### OFFENCES

**25.** A person who knowingly, Offence

- (a) fails to furnish a report required by the Minister under subsection 5 (5);

- (b) contravenes subsection 6 (2) or (3) (obstructing program supervisor, etc.); or
- (c) furnishes false information in an application under this Part or in a report or return required under this Part or the regulations,

and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention or furnishing by the corporation, is guilty of an offence and is liable upon conviction to a fine of not more than \$2,000.

PART II

VOLUNTARY ACCESS TO SERVICES

26. In this Part,

Interpretation

- (a) “advisory committee” means a Residential Placement Advisory Committee established under subsection 34 (2);
- (b) “institution” means,
  - (i) a children’s residence, other than a maternity home, operated by the Minister or under the authority of a licence issued under Part IX (Licensing) with the capacity of providing residential services to ten or more children at a time, or
  - (ii) premises designated by a Director under subsection 34 (5);
- (c) “record”, when used in reference to a person, has the same meaning as in Part VIII (Confidentiality of and Access to Records);
- (d) “special need” means a need that is related to or caused by a behavioural, developmental, emotional, physical, mental or other handicap.

CONSENTS

27.—(1) A service provider may provide a service to a person who is sixteen years of age or older only with the person’s consent, except where the court orders under this Act that the service be provided to the person.

Consent to service: person over sixteen

(2) A service provider may provide a residential service to a child who is less than sixteen years of age only with the consent of the child’s parent or, where the child is in a society’s lawful custody, the society’s consent, except where this Act provides otherwise.

Consent to residential service: child under sixteen

(3) Subsections (1) and (2) do not apply where a service is provided to a child under Part IV (Young Offenders).

Exception

(4) A child who is placed in a residential placement with the consent referred to in subsection (2) may only be discharged from the placement,

Discharge from residential placement



- (a) with the consent that would be required for a new residential placement; or
- (b) where the placement is made under the authority of an agreement made under subsection 29 (1) (temporary care agreements) or subsection 30 (1) or (2) (special needs agreements), in accordance with section 33 (termination by notice).

Transfer  
to another  
placement

(5) A child who is placed in a residential placement with the consent referred to in subsection (2) shall not be transferred from one placement to another unless the consent that would be required for a new residential placement is given.

Child's  
wishes

(6) Before a child is placed in or discharged from a residential placement or transferred from one residential placement to another with the consent referred to in subsection (2), the service provider shall take the child's wishes into account, if they can be reasonably ascertained.

Counselling  
service:  
child twelve  
or older

**28.** A service provider may provide a counselling service to a child who is twelve years of age or older with the child's consent, and no other person's consent is required, but if the child is less than sixteen years of age the service provider shall discuss with the child at the earliest appropriate opportunity the desirability of involving the child's parent.

#### TEMPORARY CARE AGREEMENTS

Temporary  
care  
agreement

**29.—**(1) A person who is temporarily unable to care adequately for a child in his or her custody, and the society having jurisdiction where the person resides, may make a written agreement for the society's care and custody of the child.

Child's age

(2) No temporary care agreement shall be made in respect of a child,

- (a) who is sixteen years of age or older; or
- (b) who is twelve years of age or older, unless the child is a party to the agreement.

Exception:  
develop-  
mental  
handicap

(3) Clause (2) (b) does not apply where it has been determined on the basis of an assessment, not more than one year before the agreement is made, that the child does not have capacity to participate in the agreement because of a developmental handicap.

Duty of  
society

(4) A society shall not make a temporary care agreement unless the society,

- (a) has determined that an appropriate residential placement that is likely to benefit the child is available; and
- (b) is satisfied that no less restrictive course of action, such as care in the child's own home, is appropriate for the child in the circumstances.

(5) No temporary care agreement shall be made for a term exceeding six months, but the parties to a temporary care agreement may, with a Director's written approval, agree to extend it for a further period or periods if the total term of the agreement, as extended, does not exceed an aggregate of twelve months.

Term  
of agreement  
limited

(6) No temporary care agreement shall be made or extended so as to result in a child being in a society's care and custody, whether under a temporary care agreement or under a temporary order or order for society wardship made under Part III (Child Protection), for a continuous period exceeding twenty-four months.

Twenty-four  
month rule

(7) A temporary care agreement may provide that the society is entitled to consent to medical treatment for the child where a parent's consent would otherwise be required.

Authority  
to consent  
to medical  
treatment  
may be  
transferred

(8) A temporary care agreement shall include:

Contents of  
temporary  
care  
agreement

1. A statement by all the parties to the agreement that the child's care and custody are transferred to the society.
2. A statement by all the parties to the agreement that the child's placement is voluntary.
3. A statement, by the person referred to in subsection (1), that he or she is temporarily unable to care for the child adequately and has discussed with the society alternatives to residential placement of the child.
4. An undertaking by the person referred to in subsection (1) to maintain contact with the child and be involved in the child's care.
5. If it is not possible for the person referred to in subsection (1) to maintain contact with the child and be involved in the child's care, the person's designation of another named person who is willing to do so.

6. The name of the individual who is the primary contact between the society and the person referred to in subsection (1).

7. Such other provisions as are prescribed.

Designation  
by advisory  
committee

(9) Where the person referred to in subsection (1) does not give an undertaking under paragraph 4 or designate another person under paragraph 5 of subsection (8), an advisory committee that has jurisdiction may, in consultation with the society, name a suitable person who is willing to maintain contact with the child and be involved in the child's care.

Variation  
of  
agreement

(10) The parties to a temporary care agreement may vary the agreement from time to time in a manner that is consistent with this Part and the regulations made under it.

#### SPECIAL NEEDS AGREEMENTS

Special  
needs  
agreement  
with society

**30.—**(1) A person who is unable to provide the services required by a child in his or her custody because the child has a special need, and a society having jurisdiction where the person resides, may with a Director's written approval make a written agreement for,

- (a) the society's provision of services to meet the child's special need; and
- (b) the society's supervision or care and custody of the child.

Special  
needs  
agreement  
with  
Minister

(2) A person who is unable to provide the services required by a child in his or her custody because the child has a special need, and the Minister, may make a written agreement for,

- (a) the Minister's provision of services to meet the child's special need; and
- (b) the Minister's supervision or care and custody of the child.

Term  
to be  
specified

(3) A special needs agreement shall only be made for a specific period, but may be extended, with a Director's written approval in the case of an agreement with a society, for a further period or periods.

s. 29 (7-10)  
apply

(4) Where a special needs agreement provides for a child's residential placement, subsections 29 (7), (8), (9) and (10) (authority to consent to medical treatment, contents of agreement, variation) apply with necessary modifications, and sub-

section 29 (4) (duty of society) applies to the society or the Minister, as the case may be, with necessary modifications.

**31.—**(1) A child who is sixteen years of age or older and is not in the care of his or her parent and has a special need, and the society having jurisdiction where the child resides, may with a Director’s written approval make a written agreement for the society’s provision of services to meet the child’s special need.

Society agreements with sixteen and seventeen year olds

(2) A child who is sixteen years of age or older and is not in the care of his or her parent and has a special need, and the Minister, may make a written agreement for the Minister’s provision of services to meet the person’s special need.

Idem: special needs agreement with Minister

(3) An agreement made under subsection (1) or (2) shall contain the prescribed provisions.

Contents of agreements

(4) Subsection 29 (10) (variation) applies to an agreement made under subsection (1) or (2).

s. 29 (10) applies

EXPIRY AND TERMINATION OF AGREEMENTS

**32.** No agreement made under section 29, 30 or 31 shall continue beyond the eighteenth birthday of the person who is its subject.

Agreement expires at eighteen

**33.—**(1) A party to an agreement made under section 29, 30 or 31 may terminate the agreement at any time by giving every other party written notice that he or she wishes to terminate the agreement.

Notice of termination of agreement

(2) Where notice is given under subsection (1), the agreement terminates on the expiry of five days, or such longer period not exceeding twenty-one days as the agreement specifies, after the day on which every other party has actually received the notice.

When notice takes effect

(3) Where notice of a wish to terminate an agreement for care and custody made under subsection 29 (1) or 30 (1) is given by or to a society under subsection (1), the society shall as soon as possible, and in any event before the agreement terminates under subsection (2),

Return of child, etc., by society

- (a) cause the child to be returned to the person who made the agreement, or to a person who has obtained an order for the child’s custody since the agreement was made; or



- (b) where the society is of the opinion that the child would be in need of protection within the meaning of subsection 37 (2) of Part III (Child Protection) if returned to the person referred to in clause (a), bring the child before the court under that Part to determine whether the child would be in need of protection in that case, and thereafter Part III applies to the child, with necessary modifications.

Idem:  
Minister

(4) Where notice of a wish to terminate an agreement for care and custody made under subsection 30 (2) is given by or to the Minister under subsection (1), subsection (3) applies to the Minister, with necessary modifications.

Idem:  
expiry  
of  
agreement

(5) Where a temporary care agreement expires or is about to expire under subsection 29 (6), and where a temporary care agreement or a special needs agreement that provides for care and custody expires or is about to expire according to its own terms and is not extended, the society or the Minister, as the case may be, shall before the agreement expires or as soon as practicable thereafter, but in any event within twenty-one days after the agreement expires,

- (a) cause the child to be returned to the person who made the agreement, or to a person who has obtained an order for the child's custody since the agreement was made; or
- (b) where the society or the Minister, as the case may be, is of the opinion that the child would be in need of protection within the meaning of subsection 37 (2) of Part III (Child Protection) if returned to the person referred to in clause (a), bring the child before the court under that Part to determine whether the child would be in need of protection in that case, and thereafter Part III applies to the child, with necessary modifications.

#### REVIEW BY RESIDENTIAL PLACEMENT ADVISORY COMMITTEE

Interpretation

**34.—**(1) In this section, “residential placement” does not include,

S.C. 1980-  
81-82-83,  
c. 110

- (a) a placement made under the *Young Offenders Act* (Canada) or under Part IV (Young Offenders);
- (b) commitment to a secure treatment program under Part VI (Extraordinary Measures); or



- (c) a placement with a person who is neither a service provider nor a foster parent.

(2) The Minister may establish Residential Placement Advisory Committees each consisting of,

Residential  
Placement  
Advisory  
Committees

- (a) persons engaged in providing services;
- (b) other persons who have demonstrated an informed concern for the welfare of children;
- (c) one representative of the Ministry; and
- (d) if the Minister wishes, another person or persons, including a representative of a band or native community, whom the Minister considers appropriate,

and shall specify the territorial jurisdiction of each advisory committee.

(3) The Minister may pay allowances and reasonable travelling expenses to any or all of the members of an advisory committee, and may authorize an advisory committee to hire support staff.

Payments,  
etc., to  
members

(4) An advisory committee has a duty to advise, inform and assist parents, children and service providers with respect to the availability and appropriateness of residential services and alternatives to residential services, to conduct reviews under this section, and to name persons for the purpose of subsection 29 (9) (contact with child under temporary care agreement), and has such further duties as are prescribed.

Duties of  
committee



(5) A Director may designate a building, group of buildings or part of a building in which residential services can be provided to ten or more children at a time as an institution for the purposes of this section.

Designation  
by Director

(6) An advisory committee shall review,

Mandatory  
review by  
committee

- (a) every residential placement in an institution of a child who resides within the advisory committee's jurisdiction, if the placement is intended to last or actually lasts ninety days or more,

-  (i) as soon as possible, but in any event within forty-five days of the day on which the child is placed in the institution, 

- (ii) unless the placement is reviewed under subclause (i), within twelve months of the establishment of the committee or within such longer period as the Minister allows, and
  - (iii) while the placement continues, at least once during each nine month period succeeding the review under subclause (i) or (ii);
- (b) every residential placement of a child twelve years of age or older who objects to the placement and resides within the advisory committee's jurisdiction,
  - (i) within the week immediately following the day that is fourteen days after the child is placed, and
  - (ii) while the placement continues, at least once during each nine month period succeeding the review under subclause (i); and
- (c) an existing or proposed residential placement of a child that the Minister refers to the advisory committee, within thirty days of the referral.

## Exception

(7) Subclause (6) (a) (i) does not apply to a residential placement that is made before this Part comes into force.

## Discretionary review

(8) An advisory committee may at any time review or re-review, on a person's request or on its own initiative, an existing or proposed residential placement of a child who resides within the advisory committee's jurisdiction.

## Review to be informal, etc.

(9) An advisory committee shall conduct a review under this section in an informal manner, in the absence of the public, and in the course of the review may,

- (a) interview the child, members of the child's family and any representatives of the child and family;
- (b) interview persons engaged in providing services and other persons who may have an interest in the matter or may have information that would assist the advisory committee;
- (c) examine documents and reports that are presented to the committee; and
- (d) examine records of the child and of members of the child's family, as defined in Part VIII (Confidential-

ity of and Access to Records), that are disclosed to the committee in accordance with that Part.

(10) At an advisory committee's request, a service provider shall assist and co-operate with the advisory committee in its conduct of a review.

Service providers to assist advisory committee

(11) In conducting a review, an advisory committee shall,

What committee shall consider

- (a) determine whether the child has a special need;
- (b) consider what programs are available for the child in the residential placement or proposed residential placement, and whether a program available to the child is likely to benefit the child;
- (c) consider whether the residential placement or proposed residential placement is appropriate for the child in the circumstances;
- (d) if it considers that a less restrictive alternative to the placement would be more appropriate for the child in the circumstances, specify that alternative;
- (e) consider the importance of continuity in the child's care and the possible effect on the child of disruption of that continuity; and
- (f) where the child is an Indian or native person, consider the importance, in recognition of the uniqueness of Indian and native culture, heritage and traditions, of preserving the child's cultural identity.

**35.—**(1) An advisory committee that conducts a review shall advise,

Recommendations

- (a) the service provider;
- (b) any representative of the child;
- (c) the child's parent or, where the child is in a society's lawful custody, the society;
- (d) the child, where it is reasonable to expect him or her to understand; and
- (e) where the child is an Indian or native person, a representative chosen by the child's band or native community,

of its recommendations as soon as the review has been completed, and shall advise the child of his or her rights under section 36 if the child is twelve years of age or older.

Report of  
review to  
Minister

(2) An advisory committee that conducts a review shall, within thirty days of completing the review, make a report of its findings and recommendations to the Minister.

Recommendation  
for less  
restrictive  
service

(3) Where an advisory committee considers that the provision of a less restrictive service to a child would be more appropriate for the child than the residential placement, the advisory committee shall recommend in its report under subsection (2) that the less restrictive service be provided to the child.

Additional  
reports at  
Minister's  
request

(4) An advisory committee shall make a report of its activities to the Minister whenever the Minister requests it, in addition to making the reports required by subsection (2).

Review by  
Children's  
Services  
Review  
Board

**36.**—(1) A child who is twelve years of age or older and is in a residential placement to which he or she objects may, if the placement has been reviewed by an advisory committee under section 34 and,

(a) the child is dissatisfied with the advisory committee's recommendation; or

(b) the advisory committee's recommendation is not followed,

apply to the Board for a determination of where he or she should remain or be placed.

Duty of  
Board

(2) The Board shall conduct a review with respect to an application made under subsection (1) and may do so by holding a hearing.

Idem

(3) The Board shall advise the child whether it intends to hold a hearing or not within ten days of receiving the child's application.

Parties

(4) The parties to a hearing under this section are,

(a) the child;

(b) the child's parent or, where the child is in a society's lawful custody, the society;

- (c) where the child is an Indian or native person, a representative chosen by the child's band or native community; and
- (d) any other persons that the Board specifies.

(5) The Board shall complete its review and make a determination within thirty days of receiving a child's application, unless, Time for determination

- (a) the Board holds a hearing with respect to the application; and
- (b) the parties consent to a longer period for the Board's determination.

(6) After conducting a review under subsection (2), the Board may, Board's recommendation

- (a) order that the child be transferred to another residential placement, if the Board is satisfied that the other residential placement is available;
- (b) order that the child be discharged from the residential placement; or
- (c) confirm the existing placement.



## PART III

## CHILD PROTECTION

Interpretation

**37.—(1)** In this Part,

- (a) “child” does not include a child as defined in paragraph 6 of subsection 3 (1) who is actually or apparently sixteen years of age or older, unless the child is the subject of an order under this Part;
- (b) “child protection worker” means a Director, a local director or a person authorized by a Director or local director for the purposes of section 40 (commencing child protection proceedings);
- (c) “extended family”, when used in reference to a child, means the persons to whom the child is related by blood, marriage or adoption;
- (d) “parent”, when used in reference to a child, means each of,
  - (i) the child’s mother,
  - (ii) an individual described in one of paragraphs 1 to 6 of subsection 8 (1) of the *Children’s Law Reform Act*, unless it is proved on a balance of probabilities that he is not the child’s natural father,
  - (iii) the individual having lawful custody of the child,
  - (iv) an individual who, during the twelve months before intervention under this Part, has demonstrated a settled intention to treat the child as a child of his or her family, or has acknowledged parentage of the child and provided for the child’s support,
  - (v) an individual who, under a written agreement or a court order, is required to provide for the child, has custody of the child or has a right of access to the child, and
  - (vi) an individual who has acknowledged parentage of the child in writing under section 12 of the *Children’s Law Reform Act*,

R.S.O. 1980,  
c. 68R.S.O. 1980,  
c. 68

but does not include a foster parent;

- (e) “place of safety” means a foster home, a hospital, and a place or one of a class of places designated as such by a Director under subsection 17 (2) of Part I (Flexible Services), but does not include,

(i) a place of secure custody as defined in Part IV (Young Offenders), or

(ii) a place of secure temporary detention as defined in Part IV.

- (2) A child is in need of protection where,

Child in  
need of  
protection

- (a) the child has suffered physical harm, inflicted by the person having charge of the child or caused by that person’s failure to care and provide for or supervise and protect the child adequately;
- (b) there is a substantial risk that the child will suffer physical harm inflicted or caused as described in clause (a);
- (c) the child has been sexually molested or sexually exploited, by the person having charge of the child or by another person where the person having charge of the child knows or should know of the possibility of sexual molestation or sexual exploitation and fails to protect the child;
- (d) there is a substantial risk that the child will be sexually molested or sexually exploited as described in clause (c);
- (e) the child requires medical treatment to cure, prevent or alleviate physical harm or suffering and the child’s parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, the treatment;
- (f) the child has suffered emotional harm, demonstrated by severe,
- (i) anxiety,
- (ii) depression,
- (iii) withdrawal, or

(iv) self-destructive or aggressive behaviour,

and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;

- (g) there is a substantial risk that the child will suffer emotional harm of the kind described in clause (f), and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, services or treatment to prevent the harm;
- (h) the child suffers from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, treatment to remedy or alleviate the condition;
- (i) the child has been abandoned, the child's parent has died or is unavailable to exercise his or her custodial rights over the child and has not made adequate provision for the child's care and custody, or the child is in a residential placement and the parent refuses or is unable or unwilling to resume the child's care and custody;
- (j) the child is less than twelve years old and has killed or seriously injured another person or caused serious damage to another person's property, services or treatment are necessary to prevent a recurrence and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, those services or treatment;
- (k) the child is less than twelve years old and has on more than one occasion injured another person or caused loss or damage to another person's property, with the encouragement of the person having charge of the child or because of that person's failure or inability to supervise the child adequately; or
- (l) the child's parent is unable to care for the child and the child is brought before the court with the parent's consent and, where the child is twelve years of

age or older, with the child's consent, to be dealt with under this Part.

(3) Where a person is directed in this Part to make an order or determination in the best interests of a child, the person shall take into consideration those of the following circumstances of the case that he or she considers relevant:

Best  
interests  
of child

1. The child's physical, mental and emotional needs, and the appropriate care or treatment to meet those needs.
2. The child's physical, mental and emotional level of development.
3. The child's cultural background.
4. The religious faith, if any, in which the child is being raised.
5. The importance for the child's development of a positive relationship with a parent and a secure place as a member of a family.
6. The child's relationships by blood or through an adoption order.
7. The importance of continuity in the child's care and the possible effect on the child of disruption of that continuity.
8. The merits of a plan for the child's care proposed by a society, including a proposal that the child be placed for adoption or adopted, compared with the merits of the child remaining with or returning to a parent.
9. The child's views and wishes, if they can be reasonably ascertained.
10. The effects on the child of delay in the disposition of the case.
11. The risk that the child may suffer harm through being removed from, kept away from, returned to or allowed to remain in the care of a parent.
12. The degree of risk, if any, that justified the finding that the child is in need of protection.

## 13. Any other relevant circumstance.

Where  
child an  
Indian or  
native  
person

(4) Where a person is directed in this Part to make an order or determination in the best interests of a child and the child is an Indian or native person, the person shall take into consideration the importance, in recognition of the uniqueness of Indian and native culture, heritage and traditions, of preserving the child's cultural identity.

## LEGAL REPRESENTATION

Legal  
representation  
of child

**38.**—(1) A child may have legal representation at any stage in a proceeding under this Part.

Court to  
consider  
issue

(2) Where a child does not have legal representation in a proceeding under this Part, the court,

- (a) shall, as soon as practicable after the commencement of the proceeding; and
- (b) may, at any later stage in the proceeding,

determine whether legal representation is desirable to protect the child's interests.

Direction for  
legal  
representation

(3) Where the court determines that legal representation is desirable to protect a child's interests, the court shall direct that legal representation be provided for the child.

Criteria

(4) Where,

- (a) the court is of the opinion that there is a difference of views between the child and a parent or a society, and the society proposes that the child be removed from a person's care or be made a society or Crown ward under paragraph 2 or 3 of subsection 53 (1);
- (b) the child is in the society's care and,
  - (i) no parent appears before the court, or
  - (ii) it is alleged that the child is in need of protection within the meaning of clause 37 (2) (a), (c), (f) or (h); or
- (c) the child is not permitted<sup>1</sup> to be present at the hearing,



legal representation shall be deemed to be desirable to protect the child's interests, unless the court is satisfied, taking into account the child's views and wishes if they can be reasonably ascertained, that the child's interests are otherwise adequately protected.

(5) Where a child's parent is less than eighteen years of age, the Official Guardian shall represent the parent in a proceeding under this Part unless the court orders otherwise. Where parent a minor

#### PARTIES AND NOTICE

**39.**—(1) The following are parties to a proceeding under this Part: Parties

1. The applicant.
2. The society having jurisdiction in the matter.
3. The child's parent.
4. Where the child is an Indian or a native person, a representative chosen by the child's band or native community.

(2) At any stage in a proceeding under this Part, the court shall add a Director as a party on his or her application. Director to be added

(3) Any person, including a foster parent, who has cared for the child continuously during the six months immediately before the hearing, Right to participate

- (a) is entitled to the same notice of the proceeding as a party;
- (b) may be present at the hearing;
- (c) may be represented by a solicitor; and
- (d) may make submissions to the court,

but shall take no further part in the hearing without leave of the court.

(4) A child twelve years of age or more who is the subject of a proceeding under this Part is entitled to receive notice of the proceeding and to be present at the hearing, unless the court is satisfied that being present at the hearing would cause the child emotional harm and orders that the child not receive Child twelve or older

notice of the proceeding and not be permitted to be present at the hearing.

Child  
under twelve

(5) A child less than twelve years of age who is the subject of a proceeding under this Part is not entitled to receive notice of the proceeding or to be present at the hearing unless the court is satisfied that the child,

(a) is capable of understanding the hearing; and

(b) will not suffer emotional harm by being present at the hearing,

and orders that the child receive notice of the proceeding and be permitted to be present at the hearing.

Child's  
participation

(6) A child who is the applicant under subsection 60 (4) (status review), receives notice of a proceeding under this Part or has legal representation in a proceeding is entitled to participate in the proceeding and to appeal under section 65 as if he or she were a party.

Dispensing  
with notice

(7) Where the court is satisfied that the time required for notice to a person might endanger the child's health or safety, the court may dispense with notice to that person.

#### COMMENCING CHILD PROTECTION PROCEEDINGS

Application

**40.—**(1) A society may apply to the court to determine whether a child is in need of protection.

Warrant to  
apprehend  
child

(2) A justice of the peace who is satisfied on the basis of a child protection worker's sworn information that,

(a) there are reasonable and probable grounds to believe that a child is in need of protection; or

(b) a child actually or apparently under the age of sixteen years has left or been removed from a society's lawful care and custody without its consent,

may, where he or she is also satisfied on the basis of the information that there are reasonable and probable grounds to believe that a less restrictive course of action is not available or will not protect the child adequately, issue a warrant authorizing a child protection worker to bring the child to a place of safety.

(3) Where the court is satisfied, on a person's application upon notice to a society, that there are reasonable and probable grounds to believe that,

Order to  
produce or  
apprehend  
child

- (a) a child is in need of protection, the matter has been reported to the society, the society has not made an application under subsection (1), and no child protection worker has sought a warrant under subsection (2) or apprehended the child under subsection (6); and
- (b) the child cannot be protected adequately otherwise than by being brought before the court,

the court may order,

- (c) that the person having charge of the child produce him or her before the court at the time and place named in the order for a hearing under subsection 43 (1) to determine whether he or she is in need of protection; or
- (d) where the court is satisfied that an order under clause (c) would not protect the child adequately, that a child protection worker employed by the society bring the child to a place of safety.

(4) It is not necessary, in an application under subsection (1), a warrant under subsection (2) or an order made under subsection (3), to describe the child by name.

Child's  
name not  
required

(5) A child protection worker authorized to bring a child to a place of safety by a warrant issued under subsection (2) or an order made under clause (3) (d) may at any time enter the premises specified in the warrant or order, by force if necessary, and may search for and remove the child.

Authority  
to enter,  
etc.

(6) A child protection worker who believes on reasonable and probable grounds that,

Apprehension  
without warrant

- (a) a child,
  - (i) is in need of protection, or
  - (ii) is actually or apparently under the age of sixteen years and has left or been removed from a society's lawful care and custody without its consent; and

- (b) there would be a substantial risk to the child's health or safety during the time necessary to bring the matter on for a hearing under subsection 43 (1) or obtain a warrant under subsection (2),

may without a warrant bring the child to a place of safety.

Police  
assistance

(7) A child protection worker acting under this section may call for the assistance of a peace officer.

Consent  
to examine  
child

(8) A child protection worker acting under subsection (6) or under a warrant issued under subsection (2) or an order made under clause (3) (d) may authorize the child's medical examination where a parent's consent would otherwise be required.

Place of  
open  
temporary  
detention

(9) Where a child protection worker who brings a child to a place of safety under this section believes on reasonable and probable grounds that no less restrictive course of action is feasible, the child may be detained in a place of safety that is a place of open temporary detention as defined in Part IV (Young Offenders).

Apprehension  
of child  
under twelve

(10) A peace officer who believes on reasonable and probable grounds that a child actually or apparently under twelve years of age has committed an act in respect of which a person twelve years of age or older could be found guilty of an offence may apprehend the child without a warrant and shall, on doing so,

- (a) as soon as practicable, return the child to the child's parent or other person having charge of the child; or
- (b) where it is not possible to return the child to the parent or other person within a reasonable time, take the child to a place of safety to be detained there until the child can be returned to the parent or other person.

Notice to  
parent, etc.

(11) The person in charge of a place of safety in which a child is detained under subsection (10) shall make reasonable efforts to notify the child's parent or other person having charge of the child of the child's detention so that the child may be returned to the parent or other person.

Where child  
not returned  
to parent,  
etc., within  
twelve hours

(12) Where a child detained in a place of safety under subsection (10) cannot be returned to the child's parent or other person having charge of the child within twelve hours of being taken to the place of safety, the child shall be deemed to have

been apprehended under subclause (6) (a) (i) as being apparently in need of protection.

(13) Where a child is detained under this Part in a place of safety that has been designated as a place of open temporary detention as defined in Part IV (Young Offenders) and leaves the place without the consent of,

Apprehension of child absent from place of open temporary detention

- (a) the society having care, custody and control of the child; or
- (b) the person in charge of the place of safety,

a peace officer, the person in charge of the place of safety or that person's delegate may apprehend the child without a warrant and,

- (c) take the child to a place of safety to be detained until he or she can be returned;
- (d) arrange for the child to be returned; or
- (e) return the child,

to the first-mentioned place of safety.

(14) Where a person authorized under subsection (6), (10) or (13) believes on reasonable and probable grounds that a child referred to in the relevant subsection is on any premises, the person may without a warrant enter the premises, by force, if necessary, and search for and remove the child.

Right of entry, etc.

(15) A person authorized to enter premises under subsection (5) or (14) shall exercise the power of entry in accordance with the regulations.

Regulations re power of entry

(16) No action shall be instituted against a child protection worker or peace officer for any act done in accordance with this section, unless the act is done maliciously or without reasonable grounds.

Protection from personal liability

(17) A peace officer has the powers of a child protection worker for the purpose of this section.

Peace officer has powers of child protection worker

HEARINGS AND ORDERS

**41.—**(1) In this section, “media” means the press, radio and television media.

Interpretation



Application

(2) This section applies to hearings held under this Part, except hearings under section 72 (child abuse register).

Hearings  
separate  
from  
criminal  
proceedings

(3) A hearing shall be held separately from hearings in criminal proceedings.

Hearings  
private  
unless court  
orders  
otherwise

(4) A hearing shall be held in the absence of the public, subject to subsection (5), unless the court, after considering,

- (a) the wishes and interests of the parties; and
- (b) whether the presence of the public would cause emotional harm to a child who is a witness at or a participant in the hearing or is the subject of the proceeding,

orders that the hearing be held in public.

Media  
representa-  
tives

(5) Media representatives chosen in accordance with subsection (6) may be present at a hearing that is held in the absence of the public, unless the court makes an order excluding them under subsection (7).

Idem

(6) The media representatives who may be present at a hearing that is held in the absence of the public shall be chosen as follows:

1. The media representatives in attendance shall choose not more than two persons from among themselves.
2. Where the media representatives in attendance are unable to agree on a choice of persons, the court may choose not more than two media representatives who may be present at the hearing.
3. The court may permit additional media representatives to be present at the hearing.

Order  
excluding  
media repre-  
sentatives or  
prohibiting  
publication

(7) The court may make an order,

- (a) excluding a particular media representative from all or part of a hearing;
- (b) excluding all media representatives from all or a part of a hearing; or

- (c) prohibiting the publication of a report of the hearing or a specified part of the hearing,

where the court is of the opinion that the presence of the media representative or representatives or the publication of the report, as the case may be, would cause emotional harm to a child who is a witness at or a participant in the hearing or is the subject of the proceeding.

(8) No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding, or the child's parent or foster parent or a member of the child's family. Prohibition:  
identifying  
child

(9) The court may make an order prohibiting the publication of information that has the effect of identifying a person charged with an offence under this Part. Idem:  
order re  
adult

(10) No person except a party or a party's solicitor shall be given a copy of a transcript of the hearing, unless the court orders otherwise. Transcript

**42.—**(1) As soon as practicable, but in any event within five days after a child is brought to a place of safety under section 40 or subsection 75 (6) or a homemaker remains or is placed on premises under subsection 74 (2), Time of  
detention  
limited

- (a) the matter shall be brought before a court for a hearing under subsection 43 (1) (child protection hearing);
- (b) the child shall be returned to the person who last had charge of the child or, where there is an order for the child's custody that is enforceable in Ontario, to the person entitled to custody under the order; or
- (c) a temporary care agreement shall be made under subsection 29 (1) of Part II (Voluntary Access to Services).

(2) Within twenty-four hours after a child is brought to a place of safety that is a place of open temporary detention, or as soon thereafter as is practicable, the matter shall be brought before a court for a hearing under subsection 43 (1) (child protection hearing), and the court shall, Idem:  
place of  
open  
temporary  
detention

- (a) where it is satisfied that no less restrictive course of action is feasible, order that the child remain in the

place of open temporary detention for a period or periods not exceeding an aggregate of thirty days and then be returned to the care and custody of the society;

- (b) order that the child be discharged from the place of open temporary detention and returned to the care and custody of the society; or
- (c) make an order under subsection 47 (2) (temporary care and custody).

Child  
protection  
hearing

**43.**—(1) Where an application is made under subsection 40 (1) to determine whether the child is in need of protection, the court shall hold a hearing to determine the issue and make an order under section 53.

Child's  
name, age,  
etc.

(2) As soon as practicable, and in any event before determining whether a child is in need of protection, the court shall determine,

- (a) the child's name and age;
- (b) the religious faith, if any, in which the child is being raised;
- (c) whether the child is an Indian or a native person and, if so, the child's band or native community; and
- (d) where the child was brought to a place of safety before the hearing, the location of the place from which the child was removed.

Where  
sixteenth  
birthday  
intervenes

(3) Despite anything else in this Part, where the child was under the age of sixteen years when the proceeding was commenced or when the child was apprehended, the court may hear and determine the matter and make an order under this Part as if the child were still under the age of sixteen years.

Territorial  
jurisdiction  
defined

**44.**—(1) In this section, "territorial jurisdiction" means a society's territorial jurisdiction under subsection 15 (2).

Place of  
hearing

(2) A hearing under this Part with respect to a child shall be held in the territorial jurisdiction in which the child ordinarily resides, except that,

- (a) where the child is brought to a place of safety before the hearing, the hearing shall be held in the

territorial jurisdiction in which the place from which the child was removed is located;

- (b) where the child is in a society's care under an order for society or Crown wardship under section 53, the hearing shall be held in the society's territorial jurisdiction; and
- (c) where the child is the subject of an order for society supervision under section 53, the hearing may be held in the society's territorial jurisdiction or in the territorial jurisdiction in which the parent or other person with whom the child is placed resides.

(3) Where the court is satisfied at any stage of a proceeding under this Part that there is a preponderance of convenience in favour of conducting it in another territorial jurisdiction, the court may order that the proceeding be transferred to that other territorial jurisdiction and be continued as if it had been commenced there.

Transfer of proceeding

(4) The court shall not make an order placing a child in the care or under the supervision of a society unless the place where the court sits is within the society's territorial jurisdiction.

Orders affecting society

**45.** The court may, on its own initiative, summon a person to attend before it, testify and produce any document or thing, and may enforce obedience to the summons as if it had been issued under the *Family Law Reform Act*.

Power of court

R.S.O. 1980,  
c. 152

**46.—(1)** Despite anything in the *Evidence Act*, before ordering that a child be placed in or returned to the care and custody of a person other than a society, the court may consider that person's past conduct toward any child that is or has been in his or her care, and any oral or written statement or report that the court considers relevant, including a transcript, exhibit or finding in an earlier civil or criminal proceeding, may be admitted into evidence and shall be proved as the court directs.

Evidence at hearing:  
past conduct toward children  
R.S.O. 1980,  
c. 145

(2) In a hearing under subsection 43 (1), evidence relating only to the disposition of the matter shall not be admitted before the court has determined that the child is in need of protection.

Idem:  
order of presentation

**47.—(1)** The court shall not adjourn a hearing for more than thirty days,

Adjournments



- (a) unless all the parties present and the person who will be caring for the child during the adjournment consent; or
- (b) if the court is aware that a party who is not present at the hearing objects to the longer adjournment.

Custody  
during  
adjournment

(2) Where a hearing is adjourned, the court shall make a temporary order for care and custody providing that the child,

- (a) remain in or be returned to the care and custody of the person who had charge of the child immediately before intervention under this Part;
- (b) remain in or be returned to the care and custody of the person referred to in clause (a), subject to the society's supervision and on such reasonable terms and conditions relating to the child's supervision as the court considers appropriate;
- (c) be placed in the care and custody of a person other than the person referred to in clause (a), with the consent of that other person, subject to the society's supervision and on such reasonable terms and conditions relating to the child's supervision as the court considers appropriate; or
- (d) remain or be placed in the care and custody of the society, but not be placed in,
  - (i) a place of secure custody as defined in Part IV (Young Offenders), or
  - (ii) a place of open temporary detention as defined in that Part that has not been designated as a place of safety.

Criteria

(3) The court shall not make an order under clause (2) (c) or (d) unless the court is satisfied that there are reasonable and probable grounds to believe that there is a substantial risk to the child's health or safety and that the child can not be protected adequately by an order under clause (2) (a) or (b).

Application  
of s. 58

(4) Where the court makes an order under clause (2) (d), section 58 (parental consents) applies with necessary modifications.

Access

(5) An order made under clause (2) (c) or (d) may contain provisions regarding any person's right of access to the child



on such terms and conditions as the court considers appropriate.

(6) The court may at any time vary or terminate an order made under subsection (2). Power to vary

(7) For the purpose of this section, the court may admit and act on evidence that the court considers credible and trustworthy in the circumstances. Evidence on adjournments

**48.** Where an application is made under subsection 40 (1) to determine whether a child is in need of protection and the determination has not been made within three months after the commencement of the proceeding, the court, Delay: court to fix date

- (a) shall by order fix a date for the hearing of the application, and the date may be the earliest date that is compatible with the just disposition of the application; and
- (b) may give such directions and make such orders with respect to the proceeding as are just.

**49.—**(1) Where the court makes an order under this Part, the court shall give, Reasons, etc.

- (a) a statement of any terms or conditions imposed on the order;
- (b) a statement of every plan for the child's care proposed to the court;
- (c) a statement of the plan for the child's care that the court is applying in its decision; and
- (d) reasons for its decision, including,
  - (i) a brief statement of the evidence on which the court bases its decision, and
  - (ii) where the order has the effect of removing or keeping the child from the care of the person who had charge of the child immediately before intervention under this Part, a statement of the reasons why the child cannot be adequately protected while in the person's care.

Idem

(2) Clause (1) (b) does not require the court to identify a person with whom or a place where it is proposed that a child be placed for care and supervision.

## ASSESSMENTS

Order for  
assessment

**50.**—(1) Where a child has been found to be in need of protection, the court may order that within a specified time,

(a) the child; or

(b) a parent or a person, except a foster parent, in whose charge the child has been or may be,

attend before and undergo an assessment by a specified person who is qualified, in the court's opinion, to perform medical, emotional, developmental, psychological, educational or social assessments and has consented to perform the assessment.

Report

(2) The person performing an assessment under subsection (1) shall make a written report of the assessment to the court within the time specified in the order, which shall not be more than thirty days unless the court is of the opinion that a longer assessment period is necessary.

Copies of  
report

(3) At least seven days before the court considers the report at a hearing, the court or, where the assessment was requested by a party, that party, shall provide a copy of the report to,

(a) the person assessed, subject to subsections (4) and (5);

(b) the child's solicitor or agent of record;

(c) a parent appearing at the hearing, or the parent's solicitor of record;

(d) the society caring for or supervising the child;

(e) a Director, where he or she requests a copy;

(f) where the child is an Indian or a native person, a representative chosen by the child's band or native community; and

(g) any other person who, in the opinion of the court, should receive a copy of the report for the purposes of the case.

(4) Where the person assessed is a child less than twelve years of age, the child shall not receive a copy of the report unless the court considers it desirable that the child receive a copy of the report.

Child under  
twelve

(5) Where the person assessed is a child twelve years of age or more, the child shall receive a copy of the report, except that where the court is satisfied that disclosure of all or part of the report to the child would cause the child emotional harm, the court may withhold all or part of the report from the child.

Child twelve  
or older

(6) The report of an assessment ordered under subsection (1) is evidence and is part of the court record of the proceeding.

Assessment  
is evidence

(7) The court may draw any inference it considers reasonable from a person's refusal to undergo an assessment ordered under subsection (1).

Inference  
from refusal

(8) The report of an assessment ordered under subsection (1) is not admissible into evidence in any other proceeding except,

Report  
inadmissible:  
exceptions

(a) an appeal in the proceeding under section 65;

(b) a proceeding under the *Coroners Act*; or

R.S.O. 1980,  
c. 93

(c) a proceeding referred to in section 77 (recovery on child's behalf),

without the consent of the person or persons assessed.

**51.** Where a child is brought before the court on consent as described in clause 37 (2) (1), the court shall, before making an order under section 53 that would remove the child from the parent's care and custody,

Consent  
order:  
special  
requirements

(a) ask whether,

(i) the society has offered the parent and child services that would enable the child to remain with the parent, and

(ii) the parent and, where the child is twelve years of age or older, the child has consulted independent legal counsel in connection with the consent; and

(b) be satisfied that,

- (i) the parent and, where the child is twelve years of age or older, the child understands the nature and consequences of the consent,
- (ii) every consent is voluntary, and
- (iii) the parent and, where the child is twelve years of age or older, the child consents to the order being sought.

Society's  
plan for  
child

**52.** The court shall, before making an order under section 53 or 61, obtain and consider a plan for the child's care prepared in writing by the society and including,

- (a) a description of the services to be provided to remedy the condition or situation on the basis of which the child was found to be in need of protection;
- (b) a statement of the criteria by which the society will determine when its wardship or supervision is no longer required;
- (c) an estimate of the time required to achieve the purpose of the society's intervention;
- (d) where the society proposes to remove or has removed the child from a person's care,
  - (i) an explanation of why the child cannot be adequately protected while in the person's care, and a description of any past efforts to do so, and
  - (ii) a statement of what efforts, if any, are planned to maintain the child's contact with the person; and
- (e) where the society proposes to remove or has removed the child from a person's care permanently, a description of the arrangements made or being made for the child's long-term stable placement.

Order where  
child in need  
of protection

**53.—**(1) Where the court finds that a child is in need of protection and is satisfied that intervention through a court order is necessary to protect the child in the future, the court shall make one of the following orders, in the child's best interests:

Supervision  
order

1. That the child be placed with or returned to a parent or another person, subject to the supervision of

the society, for a specified period of at least three and not more than twelve months.

2. That the child be made a ward of the society and be placed in its care and custody for a specified period not exceeding twelve months. Society  
wardship
3. That the child be made a ward of the Crown, until the wardship is terminated under section 61 or expires under subsection 67 (1), and be placed in the care of the society. Crown  
wardship
4. That the child be made a ward of the society under paragraph 2 for a specified period and then be returned to a parent or another person under paragraph 1, for a period or periods not exceeding an aggregate of twelve months. Consecutive  
orders of  
society  
wardship and  
supervision

(2) In determining which order to make under subsection (1), the court shall ask the parties what efforts the society or another agency or person made to assist the child before intervention under this Part. Court to  
inquire

(3) The court shall not make an order removing the child from the care of the person who had charge of him or her immediately before intervention under this Part unless the court is satisfied that less restrictive alternatives, including non-residential services and the assistance referred to in subsection (2), Less  
restrictive  
alternatives  
preferred

- (a) have been attempted and have failed;
- (b) have been refused by the person having charge of the child; or
- (c) would be inadequate to protect the child.

(4) Where the court decides that it is necessary to remove the child from the care of the person who had charge of him or her immediately before intervention under this Part, the court shall, before making an order for society or Crown wardship under paragraph 2 or 3 of subsection (1), consider whether it is possible to place the child with a relative, neighbour or other member of the child's community or extended family under paragraph 1 of subsection (1) with the consent of the relative or other person. Community  
placement  
to be  
considered

(5) Where the child referred to in subsection (4) is an Indian or a native person, unless there is a substantial reason Idem:  
where child  
an Indian or  
a native  
person



for placing the child elsewhere, the court shall place the child with,

- (a) a member of the child's extended family;
- (b) a member of the child's band or native community;  
or
- (c) another Indian or native family.

Crown  
wardship  
order  
restricted

(6) The court shall not make an order for Crown wardship under paragraph 3 of subsection (1) unless the court is satisfied that the circumstances justifying the order are unlikely to change within a reasonably foreseeable time not exceeding twenty-four months so that the child can be returned to the care of the person who had charge of him or her immediately before intervention under this Part.

Idem

(7) When the court has dispensed with notice to a person under subsection 39 (7), the court shall not make an order for Crown wardship under paragraph 3 of subsection (1), or an order for society wardship under paragraph 2 of subsection (1) for a period exceeding thirty days, until a further hearing under subsection 43 (1) has been held upon notice to that person.

Terms and  
conditions of  
supervision  
order

(8) Where the court makes a supervision order under paragraph 1 of subsection (1), the court may impose reasonable terms and conditions relating to the child's care and supervision on,

- (a) the person with whom the child is placed or to whom the child is returned;
- (b) the supervising society;
- (c) the child; and
- (d) any other person who participated in the hearing.

Where no  
court order  
necessary

(9) Where the court finds that a child is in need of protection but is not satisfied that a court order is necessary to protect the child in the future, the court shall order that the child remain with or be returned to the person who had charge of the child immediately before intervention under this Part.

#### ACCESS

Access order

**54.—**(1) The court may, in the child's best interests,

- (a) when making an order under this Part; or
- (b) upon an application under subsection (2),

make, vary or terminate an order respecting a person's access to the child or the child's access to a person, and may impose such terms and conditions on the order as the court considers appropriate.

(2) Where a child is in a society's care and custody or supervision, Who may apply

- (a) the child;
- (b) any other person, including, where the child is an Indian or a native person, a representative chosen by the child's band or native community; or
- (c) the society,

may apply to the court at any time for an order under subsection (1).

(3) An applicant referred to in clause (2) (b) shall give notice of the application to the society. Notice

(4) A society making or receiving an application under subsection (2) shall give notice of the application to, Idem

- (a) the child, subject to subsections 39 (4) and (5) (notice to child);
- (b) the child's parent;
- (c) the person caring for the child at the time of the application; and
- (d) where the child is an Indian or a native person, a representative chosen by the child's band or native community.

(5) No order respecting access to a person sixteen years of age or more shall be made under subsection (1) without the person's consent. Child over sixteen

(6) No application shall be made under subsection (2) by a person other than a society within six months of, Six month period

- (a) the making of an order under section 53;

- (b) the disposition of a previous application by the same person under subsection (2);
- (c) the disposition of an application under section 60 (review); or
- (d) the final disposition or abandonment of an appeal from an order referred to in clause (a), (b) or (c),

whichever is later.

No  
application  
where child  
placed for  
adoption

(7) No person or society shall make an application under subsection (2) where the child,

- (a) is a Crown ward;
- (b) has been placed in a person's home by the society or by a Director for the purpose of adoption under Part VII (Adoption); and
- (c) still resides in that person's home.

Access:  
where child  
removed  
from person  
in charge

**55.**—(1) Where an order is made under paragraph 1 or 2 of subsection 53 (1) removing a child from the person who had charge of the child immediately before intervention under this Part, the court shall make an order for access by the person unless the court is satisfied that continued contact with him or her would not be in the child's best interests.

Idem:  
Crown ward

(2) Where a child is made a Crown ward under paragraph 3 of subsection 53 (1), the court shall not make an order for access by the person who had charge of the child immediately before intervention under this Part unless the court is satisfied that,

- (a) permanent placement in a family setting has not been planned or is not possible, and the person's access will not impair the child's future opportunities for such placement;
- (b) the child is at least twelve years of age and wishes to maintain contact with the person;
- (c) the child has been or will be placed with a person who does not wish to adopt the child; or
- (d) some other special circumstance justifies making an order for access.

(3) The court shall not terminate an order for access to a Crown ward unless the court is satisfied that the circumstances that justified the making of the order under subsection (2) no longer exist.

Termination  
of access to  
Crown ward

#### PAYMENT ORDERS

**56.—**(1) Where the court places a child in the care of,

Order for  
payment by  
parent

(a) a society; or

(b) a person other than the child's parent, subject to a society's supervision,

the court may order a parent or a parent's estate to pay the society a specified amount at specified intervals for each day the child is in the society's care or supervision.

(2) In making an order under subsection (1), the court shall consider those of the following circumstances of the case that the court considers relevant:

Criteria

1. The assets and means of the child and of the parent or the parent's estate.
2. The child's capacity to provide for his or her own support.
3. The capacity of the parent or the parent's estate to provide support.
4. The child's and the parent's age and physical and mental health.
5. The child's mental, emotional and physical needs.
6. Any legal obligation of the parent or the parent's estate to provide support for another person.
7. The child's aptitude for and reasonable prospects of obtaining an education.
8. Any legal right of the child to support from another source, other than out of public moneys.

(3) No order made under subsection (1) shall extend beyond the day on which the child attains the age of eighteen years.

Order ends  
at eighteen

Power to vary (4) The court may vary, suspend or terminate an order made under subsection (1) where the court is satisfied that the circumstances of the child or parent have changed.

Collection by municipality (5) The council of a municipality may enter into an agreement with the board of directors of a society providing for the collection by the municipality, on the society's behalf, of the amounts ordered to be paid by a parent under subsection (1).

Enforcement  
R.S.O. 1980,  
c. 152 (6) An order made against a parent under subsection (1) may be enforced under sections 27 to 32 of the *Family Law Reform Act* as if it were an order for support.

#### SOCIETY AND CROWN WARDSHIP

Application **57.**—(1) This section applies where a child is made a society or Crown ward under paragraph 2 or 3 of subsection 53 (1).

Placement (2) The society having care of a child shall choose a residential placement for the child that,

- (a) represents the least restrictive alternative for the child;
- (b) where possible, respects the religious faith, if any, in which the child is being raised;
- (c) where possible, respects the child's linguistic and cultural heritage;
- (d) where the child is an Indian or a native person, is with a member of the child's extended family, a member of the child's band or native community or another Indian or native family, if possible; and
- (e) takes into account the child's wishes, if they can be reasonably ascertained, and the wishes of any parent who is entitled to access to the child.

Education (3) The society having care of a child shall ensure that the child receives an education that corresponds to his or her aptitudes and abilities.

Placement outside or removal from Ontario (4) The society having care of a child shall not place the child outside Ontario or permit a person to remove the child from Ontario permanently unless a Director is satisfied that extraordinary circumstances justify the placement or removal.

Rights of child, parent and foster parent (5) The society having care of a child shall ensure that,



- (a) the child is afforded all the rights referred to in Part V (Rights of Children); and
- (b) the wishes of any parent who is entitled to access to the child and, where the child is a Crown ward, of any foster parent with whom the child has lived continuously for two years are taken into account in the society's major decisions concerning the child.

(6) The society having care of a child may remove the child from a foster home or other residential placement where, in the opinion of a Director or local director, it is in the child's best interests to do so.

Change of placement

(7) Where a child is a Crown ward and has lived with a foster parent continuously for two years, the society shall not remove the child under subsection (6) without first giving the foster parent ten days notice of the proposed removal and of his or her right to a review under section 64.

Rights of foster parents in certain cases

(8) Where a foster parent requests a review under section 64 within ten days of receiving a notice under subsection (7), the society shall not remove the child until the review and any further review by a Director have been completed and unless the society's board of directors or the Director, as the case may be, recommend that the child be removed.

Time for review

(9) Subsections (7) and (8) do not apply where, in the opinion of a Director or local director, there would be a substantial risk to the child's health or safety during the time necessary for notice to the foster parent and a review under section 64.

Exception where child at risk

(10) Sections 34, 35 and 36 (review by Residential Placement Advisory Committee, further review by Children's Services Review Board) of Part II (Voluntary Access to Services) apply to a residential placement made by a society.

Review of certain placements

**58.**—(1) Where a child is made a society ward under paragraph 2 of subsection 53 (1), the society may consent to and authorize medical treatment for the child where a parent's consent would otherwise be required, unless the court orders that the parent shall retain any right that he or she may have to give or refuse consent to medical treatment for the child.

Society ward: consent to medical treatment

(2) The court shall not make an order under subsection (1) where failure to consent to necessary medical treatment was a ground for finding that the child was in need of protection.

Idem

Court order

(3) Where a parent referred to in an order made under subsection (1) refuses or is unavailable or unable to consent to medical treatment for the child and the court is satisfied that the treatment would be in the child's best interests, the court may authorize the society to consent to the treatment.

Consent to  
child's  
marriage  
R.S.O. 1980,  
c. 256

(4) Where a child is made a society ward under paragraph 2 of subsection 53 (1), the child's parent retains any right that he or she may have under the *Marriage Act* to give or refuse consent to the child's marriage.

Crown  
custodian  
of Crown  
wards

**59.**—(1) Where a child is made a Crown ward under paragraph 3 of subsection 53 (1), the Crown has the rights and responsibilities of a parent for the purpose of the child's care, custody and control and has the right to give or refuse consent to medical treatment for the child where a parent's consent would otherwise be required, and the Crown's powers, duties and obligations in respect of the child, except those assigned to a Director by this Act or the regulations, shall be exercised and performed by the society caring for the child.

Society  
custodian of  
society wards

(2) Where a child is made a society ward under paragraph 2 of subsection 53 (1), the society has the rights and responsibilities of a parent for the purpose of the child's care, custody and control.

#### REVIEW

Application

**60.**—(1) This section applies where a child is the subject of an order for society supervision, society wardship or Crown wardship under subsection 53 (1).

Society to  
seek status  
review

(2) The society having care, custody or supervision of a child,

- (a) may apply to the court at any time, subject to subsection (9);
- (b) where the order is for society supervision or society wardship, shall apply to the court before the expiry of the order, except under subsection 67 (1) (age of eighteen); and
- (c) where the society has removed the child from the care of a person with whom the child was placed under an order for society supervision, shall apply to the court within five days of the child's removal,

for review of the child's status.

(3) Where a child is the subject of an order for society supervision under subsection 53 (1), clauses (2) (a) and (c) also apply to the society that has jurisdiction in the county or district in which the parent or other person with whom the child is placed resides.

Application  
of  
subs. (2)  
(a, c)

(4) An application for review of a child's status may be made on notice to the society by,

Others may  
seek status  
review

- (a) the child, where the child is at least twelve years of age;
- (b) any parent of the child, subject to subsection (5);
- (c) the person with whom the child was placed under an order for society supervision; or
- (d) where the child is an Indian or a native person, a representative chosen by the child's band or native community.

(5) Where the child is a Crown ward and has lived with the same foster parent continuously during the two years immediately before the application, an application under subsection (4) shall not be made by any parent of the child without the court's leave.

Leave  
required  
in certain  
cases

(6) A society making an application under subsection (2) or receiving notice of an application under subsection (4) shall give notice of the application to,

Notice

- (a) the child, subject to subsections 39 (4) and (5) (notice to child);
- (b) the child's parent, unless the child is a Crown ward and is sixteen years of age or older;
- (c) the person with whom the child was placed under an order for society supervision;
- (d) a foster parent who has cared for the child continuously during the six months immediately before the application;
- (e) where the child is an Indian or a native person, a representative chosen by the child's band or native community; and
- (f) a Director, if the child is a Crown ward.

Six month  
period

(7) No application shall be made under subsection (4) within six months of,

- (a) the making of the original order under subsection 53 (1);
- (b) the disposition of a previous application by any person under subsection (4); or
- (c) the final disposition or abandonment of an appeal from an order referred to in clause (a) or (b),

whichever is the latest.

Exception

(8) Subsection (7) does not apply where,

- (a) the child is a society ward or the subject of an order for society supervision, or the child is a Crown ward and an order for access has been made under subsection 55 (2); and
- (b) the court is satisfied that a major element of the plan for the child's care that the court applied in its decision is not being carried out.

No review  
where child  
placed for  
adoption

(9) No person or society shall make an application under this section where the child,

- (a) is a Crown ward;
- (b) has been placed in a person's home by the society or by a Director for the purpose of adoption under Part VII; and
- (c) still resides in that person's home.

Interim care  
and custody

(10) Where an application is made under this section, the child shall remain in the care and custody of the person or society having charge of the child, until the application is disposed of, unless the court is satisfied that the child's best interests require a change in the child's care and custody.

Court may  
vary, etc.

**61.—**(1) Where an application for review of a child's status is made under section 60, the court may, in the child's best interests,

- (a) vary or terminate the original order made under subsection 53 (1), including a term or condition or a provision for access that is part of the order;

- (b) order that the original order terminate on a specified future date; or
- (c) make a further order or orders under section 53.

(2) Where a child has been made a Crown ward under paragraph 3 of subsection 53 (1), the court shall not make an order for society wardship under subsection (1). Restriction

(3) Before making an order under subsection (1), the court shall consider, Criteria

- (a) whether the grounds on which the original order was made still exist;
- (b) whether the plan for the child's care that the court applied in its decision is being carried out;
- (c) what services have been provided or offered under this Act to the person who had charge of the child immediately before intervention under this Part;
- (d) whether the person is satisfied with those services;
- (e) whether the society is satisfied that the person has co-operated with the society and with any person or agency providing services;
- (f) whether the person or the child requires further services;
- (g) whether, where immediate termination of an order has been applied for but is not appropriate, a future date for termination of the order can be estimated; and
- (h) what is the least restrictive alternative that is in the child's best interests.

**62.—**(1) A Director or a person authorized by a Director shall, at least once during each calendar year, review the status of every child, Director's  
annual  
review  
of Crown  
wards

- (a) who is a Crown ward;
- (b) who was a Crown ward throughout the immediately preceding twenty-four months; and
- (c) whose status has not been reviewed under this section or under section 61 during that time.



Idem

(2) After a review under subsection (1), the Director may direct the society to make an application for review of the child's status under subsection 60 (2) or give any other directions that, in the Director's opinion, is in the child's best interests.

Investigation  
by judge

**63.**—(1) The Minister may appoint a judge of the Supreme Court, District Court, Unified Family Court, Provincial Court (Family Division), Provincial Court (Criminal Division), Provincial Offences Court or Provincial Court (Civil Division) to investigate a matter relating to,

(a) a child in a society's care; or

(b) the proper administration of this Part,

and the judge shall conduct the investigation and make a written report to the Minister.

Powers of  
judgeR.S.O. 1980,  
c. 411

(2) For the purposes of an investigation under subsection (1), the judge has the powers of a commission under Part II of the *Public Inquiries Act*, and that Part applies to the investigation as if it were an inquiry under that Act.

Society  
review  
procedure

**64.**—(1) A society shall establish a written review procedure, which shall be approved by a Director, for hearing and dealing with complaints by any person regarding services sought or received from the society, and shall make the review procedure available to any person on request.

Idem

(2) A review procedure established under subsection (1), shall include an opportunity for the person making the complaint to be heard by the society's board of directors.

Further  
review by  
Director

(3) A person who makes a complaint and is not satisfied with the response of the society's board of directors may have the matter reviewed by a Director.

## APPEALS

Appeal

**65.**—(1) An appeal from a court's order under this Part may be made to the District Court by,

(a) the child, if the child is entitled to participate in the proceeding under subsection 39 (6) (child's participation);

(b) any parent of the child;

- (c) the person who had charge of the child immediately before intervention under this Part;
- (d) a Director or local director; or
- (e) where the child is an Indian or a native person, a representative chosen by the child's band or native community.

(2) Subsection (1) does not apply to an order for an assessment under section 50. Exception

(3) Where a decision regarding the care and custody of a child is appealed under subsection (1), execution of the decision shall be stayed for the ten days immediately following service of the notice of appeal on the court that made the decision, and where the child is in the society's custody at the time the decision is made, the child shall remain in the care and custody of the society until, Care and custody pending appeal

- (a) the ten day period of the stay has expired; or
- (b) an order is made under subsection (4),

whichever is earlier.

(4) The District Court may, in the child's best interests, make a temporary order for the child's care and custody pending final disposition of the appeal, except an order placing the child in a place of secure custody as defined in Part IV (Young Offenders) or a place of secure temporary detention as defined in that Part that has not been designated as a place of safety, and the District Court may, on any party's motion before the final disposition of the appeal, vary or terminate the order or make a further order. Temporary order

(5) No extension of the time for an appeal shall be granted where the child has been placed for adoption under Part VII (Adoption). No extension where child placed for adoption

(6) The District Court may receive further evidence relating to events after the appealed decision. Further evidence

(7) An appeal under this section shall be heard in the county or district in which the order appealed from was made. Place of hearing

(8) Section 41 (hearings private, etc.) applies with necessary modifications to an appeal under this section. s. 41 applies

## EXPIRY OF ORDERS

Twenty-four  
month rule

**66.**—(1) Subject to subsection (3), the court shall not make an order under this Part that results in a child being a society ward for a continuous period exceeding twenty-four months.

Idem

(2) In the calculation of the twenty-four month period referred to in subsection (1), time during which a child is in a society's care,

- (a) under an agreement made under subsection 29 (1) or 30 (1) (temporary care or special needs agreement) of Part II (Voluntary Access to Services); or
- (b) under a temporary order made under clause 47 (2) (d),

shall be counted.

Idem

(3) Where the twenty-four month period referred to in subsection (1) expires and,

- (a) an appeal of an order made under subsection 53 (1) has been commenced and is not yet finally disposed of; or
- (b) the court has adjourned a hearing under section 61 (status review),

the period shall be deemed to be extended until the appeal has been finally disposed of and any new hearing ordered on appeal has been completed or an order has been made under section 61, as the case may be.

Expiry of  
orders

**67.**—(1) An order under this Part expires when the child who is the subject of the order,

- (a) attains the age of eighteen years; or
- (b) marries,

whichever comes first.

Crown ward:  
continuing  
care

(2) Where an order for Crown wardship expires under subsection (1), the society may, with a Director's approval, continue to provide care and maintenance for the former Crown ward in accordance with the regulations.

## DUTY TO REPORT

**68.**—(1) In this section and in sections 69, 70 and 71, “to suffer abuse”, when used in reference to a child, means to be in need of protection within the meaning of clause 37 (2) (a), (c), (e), (f) or (h). Interpretation

(2) A person who believes on reasonable grounds that a child is or may be in need of protection shall forthwith report the belief and the information upon which it is based to a society. Duty to report that child in need of protection

(3) Despite the provisions of any other Act, a person referred to in subsection (4) who, in the course of his or her professional or official duties, has reasonable grounds to suspect that a child is or may be suffering or may have suffered abuse shall forthwith report the suspicion and the information on which it is based to a society. Idem: professional or official duties, suspicion of abuse

(4) Subsection (3) applies to every person who performs professional or official duties with respect to a child, including, Application of subs. (3)

- (a) a health care professional, including a physician, nurse, dentist, pharmacist and psychologist;
- (b) a teacher, school principal, social worker, family counsellor, priest, rabbi, clergyman, operator or employee of a day nursery and youth and recreation worker;
- (c) a peace officer and a coroner;
- (d) a solicitor; and
- (e) a service provider and an employee of a service provider.

(5) In clause (4) (b), “youth and recreation worker” does not include a volunteer. Interpretation

(6) A society that obtains information that a child in its care and custody is or may be suffering or may have suffered abuse shall forthwith report the information to a Director. Duty of society

(7) This section applies although the information reported may be confidential or privileged, and no action for making the report shall be instituted against a person who acts in accordance with subsection (2) or (3) unless the person acts Section overrides privilege



maliciously or without reasonable grounds for the belief or suspicion, as the case may be.

Exception:  
solicitor  
client  
privilege

(8) Nothing in this section abrogates any privilege that may exist between a solicitor and his or her client.

#### REVIEW TEAMS

Interpretation

**69.**—(1) In this section, “review team” means a team established by a society under subsection (2).

Review  
teams

(2) Every society shall establish a review team that includes,

(a) persons who are professionally qualified to perform medical, psychological, developmental, educational or social assessments; and

(b) at least one legally qualified medical practitioner.

Chairman

(3) The members of a review team shall choose a chairman from among themselves.

Duty of  
team

(4) Whenever a society refers the case of a child who may be suffering or may have suffered abuse to its review team, the review team or a panel of at least three of its members, designated by the chairman, shall,

(a) review the case; and

(b) recommend to the society how the child may be protected.

Disclosure to  
team  
permitted

(5) Despite the provisions of any other Act, a person may disclose to a review team or to any of its members information reasonably required for a review under subsection (4).

Subsection  
overrides  
privilege

(6) Subsection (5) applies although the information disclosed may be confidential or privileged and no action for disclosing the information shall be instituted against a person who acts in accordance with subsection (5), unless the person acts maliciously or without reasonable grounds.

Where child  
not to be  
returned  
without  
review  
or  
hearing

(7) Where a society with a review team has information that a child placed in its care under subsection 47 (2) (temporary care and custody) or subsection 53 (1) (order where child in need of protection) may have suffered abuse, the society shall not return the child to the care of the person who had charge of the child at the time of the possible abuse unless,



- (a) the society has,
  - (i) referred the case to its review team, and
  - (ii) obtained and considered the review team's recommendations; or
- (b) the court has terminated the order placing the child in the society's care.

COURT-ORDERED ACCESS TO RECORDS

**70.**—(1) In this section, “record” means recorded information, regardless of physical form or characteristics. Interpretation

(2) A Director or society may make a motion at any time for an order under subsection (3) for the production of a record or part of a record, on notice to the person in possession or control of the record. Motion for order

- (3) Where the court is satisfied that, Order for production
  - (a) a record contains information that may be relevant to a consideration of whether a child is suffering abuse or is likely to suffer abuse; and
  - (b) the person in possession or control of the record has refused to permit the Director or local director to inspect it,

the court may order that the person produce the record or a specified part of the record for inspection and copying by the Director or local director or a person authorized by one of them or by the court.

(4) In considering whether to make an order under subsection (3), the court may examine the record. Court may examine record

(5) No person who obtains information by means of an order made under subsection (3) shall disclose the information except, Information confidential

- (a) as specified in the order; and
- (b) in testimony in a proceeding under this Part.

(6) Subject to subsection (7), this section applies despite any other Act, but nothing in this section abrogates any privilege that may exist between a solicitor and his or her client. Application: solicitor client privilege excepted

Matters  
to be  
considered  
by court  
R.S.O. 1980,  
c. 262

(7) Where an application under subsection (2) concerns a record that is a clinical record within the meaning of section 29 of the *Mental Health Act*, subsection 29 (6) (attending physician's statement, hearing) of that Act applies and the court shall give equal consideration to,

- (a) the matters to be considered under subsection 29 (7) of that Act; and
- (b) the need to protect the child's health and safety.

#### CHILD ABUSE REGISTER

Interpretation

**71.**—(1) In this section and in section 72,

- (a) "Director" means the person appointed under subsection (2);
- (b) "register" means the register maintained under subsection (5);
- (c) "registered person" means a person identified in the register, but does not include,
  - (i) a person who reports to a society under subsection 68 (2) or (3) and is not the subject of the report, or
  - (ii) the child who is the subject of a report.

Director

(2) The Minister may appoint an employee of the Ministry as Director for the purposes of this section.

Duty of  
society

(3) A society that receives a report under section 68 that a child, including a child in the society's care, is or may be suffering or may have suffered abuse shall forthwith verify the reported information, or ensure that the information is verified by another society, in the manner determined by the Director, and if the information is verified, the society that verified it shall forthwith report it to the Director in the prescribed form.

Protection  
from  
liability

(4) No action or other proceeding for damages shall be instituted against an officer or employee of a society, acting in good faith, for an act done in the execution or intended execution of the duty imposed on the society by subsection (3) or for an alleged neglect or default of that duty.

Child abuse  
register

(5) The Director shall maintain a register in the manner prescribed by the regulations for the purpose of recording

information reported to the Director under subsection (3), but the register shall not contain information that has the effect of identifying a person who reports to a society under subsection 68 (2) or (3) and is not the subject of the report.

(6) Despite the provisions of any other Act, no person shall inspect, remove, alter or permit the inspection, removal or alteration of information maintained in the register, or disclose or permit the disclosure of information that the person obtained from the register, except as this section authorizes.

Register  
confidential

(7) A person who is,

Coroner's  
inquest, etc.

(a) a coroner, or a legally qualified medical practitioner or peace officer authorized in writing by a coroner, acting in connection with an investigation or inquest under the *Coroners Act*; or

R.S.O. 1980,  
c. 93

(b) the Official Guardian or the Official Guardian's authorized agent,

may inspect, remove and disclose information in the register in accordance with his or her authority.

(8) The Minister or the Director may permit,

Minister or  
Director may  
permit access  
to register

(a) a person who is employed by,

(i) the Ministry,

(ii) a society, or

(iii) a recognized child protection agency outside Ontario; or

(b) a person who is providing or proposes to provide counselling or treatment to a registered person,

to inspect and remove information in the register and to disclose the information to a person referred to in subsection (7) or to another person referred to in this subsection, subject to such terms and conditions as the Director may impose.

(9) The Minister or the Director may disclose information in the register to a person referred to in subsection (7) or (8).

Director may  
disclose  
information

(10) A person who is engaged in research may, with the Director's written approval, inspect and use the information in the register, but shall not,

Research

- (a) use or communicate the information for any purpose except research, academic pursuits or the compilation of statistical data; or
- (b) communicate any information that may have the effect of identifying a person named in the register.

Registered person

(11) A child, a registered person or the child's or registered person's solicitor or agent may inspect only the information in the register that refers to the child or registered person.

Physician

(12) A legally qualified medical practitioner may, with the Director's written approval, inspect the information in the register that is specified by the Director.

Amendment of register

(13) The Director or an employee of the Ministry acting under the Director's authority,

- (a) shall remove a name from or otherwise amend the register where the regulations require the removal or amendment; and
- (b) may amend the register to correct an error.

Register inadmissible: exceptions

(14) The register shall not be admitted into evidence in a proceeding except,

- (a) to prove compliance or non-compliance with this section;
- (b) in a hearing or appeal under section 72;
- (c) in a proceeding under the *Coroners Act*; or
- (d) in a proceeding referred to in section 77 (recovery on child's behalf).

R.S.O. 1980, c. 93

Interpretation

**72.**—(1) In this section, "hearing" means a hearing held under clause (4) (b).

Notice to registered person

(2) Where an entry is made in the register, the Director shall forthwith give written notice to each registered person referred to in the entry indicating that,

- (a) the person is identified in the register;
- (b) the person or the person's solicitor or agent is entitled to inspect the information in the register that refers to or identifies the person; and

- (c) the person is entitled to request that the Director remove the person's name from or otherwise amend the register.

(3) A registered person who receives notice under subsection (2) may request that the Director remove the person's name from or otherwise amend the register.

Request to  
amend  
register

(4) On receiving a request under subsection (3), the Director may,

Director's  
response

- (a) grant the request; or
- (b) hold a hearing, on ten days written notice to the parties, to determine whether to grant or refuse the request.

(5) The Director may authorize another person to hold a hearing and exercise the Director's powers and duties under subsection (8).

Delegation

(6) The *Statutory Powers Procedure Act* applies to a hearing and a hearing shall be conducted in accordance with the prescribed practices and procedures.

R.S.O. 1980,  
c. 484 applies

(7) The parties to a hearing are,

Hearing

- (a) the registered person;
- (b) the society that verified the information referring to or identifying the registered person; and
- (c) any other person specified by the Director.

(8) Where the Director determines, after holding a hearing, that the information in the register with respect to a registered person is in error or should not be in the register, the Director shall remove the registered person's name from or otherwise amend the register, and may order that the society's records be amended to reflect the Director's decision.

Director's  
decision

(9) A party to a hearing may appeal the Director's decision to the Divisional Court.

Appeal to  
Divisional  
Court

(10) A hearing or appeal under this section shall be held in the absence of the public and no media representative shall be permitted to attend.

Hearing  
private



- Publication (11) No person shall publish or make public information that has the effect of identifying a witness at or a participant in a hearing, or a party to a hearing other than a society.
- Record inadmissible: exception (12) The record of a hearing or appeal under this section shall not be admitted into evidence in any other proceeding except a proceeding under clause 81 (1) (d) (confidentiality of register) or clause 81 (1) (e) (amendment of society's records).

#### POWERS OF DIRECTOR

- Director's power to transfer **73.**—(1) A Director may direct, in the best interests of a child in the care or supervision of a society, that the child,
- (a) be transferred to the care or supervision of another society; or
  - (b) be transferred from one placement to another placement designated by the Director.
- Criteria (2) In determining whether to direct a transfer under clause (1) (b), the Director shall take into account,
- (a) the length of time the child has spent in the existing placement;
  - (b) the views of the foster parents; and
  - (c) the views and preferences of the child, where they are reasonably ascertainable.

#### HOMEMAKERS

- Interpretation **74.**—(1) In this section, “homemaker” means a person who is approved by a Director or local director for the purposes of this section.
- Homemaker may remain on premises (2) Where it appears to a person entering premises under section 40 that,
- (a) a child who in the person's opinion is unable to care for himself or herself has been left on the premises without competent care or supervision; and
  - (b) no person having charge of the child is available or able to consent to the placement of a homemaker on the premises,

the person may, instead of taking the child to a place of safety,

- (c) remain on the premises; or
- (d) arrange with a society for the placement of a homemaker on the premises.

(3) A homemaker who remains or is placed on premises under subsection (2) may enter and live there, carry on normal housekeeping activities that are reasonably necessary for the care of any child on the premises and exercise reasonable control and discipline over any such child.

Homemaker's  
authority

(4) No action shall be instituted against a homemaker who remains or is placed on premises under subsection (2) for,

Protection  
from  
personal  
liability

- (a) entering and living on the premises;
- (b) anything done or omitted in connection with normal housekeeping activities on the premises;
- (c) providing goods and services reasonably necessary for the care of any child on the premises; or
- (d) the exercise of reasonable control and discipline over any child on the premises,

so long as the homemaker acts in good faith with reasonable care in the circumstances.

(5) Where a homemaker remains or is placed on premises under subsection (2), the society shall forthwith notify or make reasonable efforts to notify the person last having charge of the child that a homemaker has been placed on the premises.

Notice to  
person  
having charge  
of child

(6) Where a child with whom a homemaker has been placed under subsection (2),

Court order,  
etc.

- (a) is found not to be in need of protection, the homemaker shall leave the premises; or
- (b) is found to be in need of protection, the court may authorize the homemaker to remain on the premises until,
  - (i) a specified day not more than thirty days from the date of the order, or
  - (ii) a person who is entitled to custody of the child returns to care for the child,

whichever is sooner.

Extension (7) Where no person returns to care for the child before the day specified in an order under clause (6) (b), the court may,

(a) extend the order; or

(b) hold a further hearing under section 43 and make an order under section 53.

OFFENCES, RESTRAINING ORDERS, RECOVERY ON CHILD'S  
BEHALF

Interpretation **75.**—(1) In this section, “abuse” means a state or condition of being physically harmed, sexually molested or sexually exploited.

Child abuse (2) No person having charge of a child shall,

(a) inflict abuse on the child; or

(b) by failing to care and provide for or supervise and protect the child adequately,

(i) permit the child to suffer abuse, or

(ii) permit the child to suffer from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development.

Leaving child unattended (3) No person having charge of a child less than sixteen years of age shall leave the child without making provision for his or her supervision and care that is reasonable in the circumstances.

Reverse onus (4) Where a person is charged with contravening subsection (3) and the child is less than ten years of age, the onus of establishing that the person made provision for the child's supervision and care that was reasonable in the circumstances rests with the person.

Allowing child to loiter, etc. (5) No person having charge of a child less than sixteen years of age shall permit the child to,

(a) loiter in a public place; or

(b) be in a place of public entertainment, unless accompanied by the person or by an individual eighteen

years of age or older who is appointed by the person,

between the hours of midnight and 6 a.m.

(6) Where a child who is actually or apparently less than sixteen years of age is in a place to which the public has access, unaccompanied by a responsible adult, between the hours of midnight and 6 a.m., a peace officer may apprehend the child without a warrant and proceed as if the child had been apprehended under subsection 40 (10) (child under twelve).

Police may take child home or to place of safety

(7) The court may, in connection with a case arising under subsection (2), (3) or (5), proceed under this Part as if an application had been made under subsection 40 (1) (child protection proceeding) in respect of the child.

Child protection hearing

**76.**—(1) Where the court finds that a child is in need of protection, the court may, instead of or in addition to making an order under subsection 53 (1), make an order in the child's best interests restraining or prohibiting a person's access to or contact with the child, and may include in the order such directions as the court considers appropriate for implementing the order and protecting the child.

Restraining order

(2) An order shall not be made under subsection (1) unless notice of the proceeding has been served personally on the person to be named in the order.

Idem: notice

(3) An order made under subsection (1) shall be in force for a specified period not exceeding six months.

Six month maximum

(4) An application for the extension, variation or termination of an order made under subsection (1) may be made by,

Extension, variation and termination

- (a) the person who is the subject of the order;
- (b) the child;
- (c) the person having charge of the child;
- (d) a society;
- (e) a Director; or
- (f) where the child is an Indian or a native person, a representative chosen by the child's band or native community.

Idem

(5) Where an application is made under subsection (4), the court may, in the child's best interests,

- (a) extend the order for a further period or periods of six months; or
- (b) vary or terminate the order.

Child in  
society's  
care not to  
be returned  
while order  
in force

(6) Where a society has care of a child and an order made under subsection (1) prohibiting a person's access to the child is in force, the society shall not return the child to the care of,

- (a) the person named in the order; or
- (b) a person who may permit that person to have access to the child.

Interpretation

**77.**—(1) In this section, “to suffer abuse”, when used in reference to a child, means to be in need of protection within the meaning of clause 37 (2) (a), (c), (e), (f) or (h).

Recovery  
on child's  
behalf

(2) When the Official Guardian is of the opinion that a child has a cause of action or other claim because the child has suffered abuse, the Official Guardian may, if he or she considers it to be in the child's best interests, institute and conduct proceedings on the child's behalf for the recovery of damages or other compensation.

Idem:  
society

(3) Where a child is in a society's care and custody, subsection (2) also applies to the society with necessary modifications.

Prohibition

**78.** No person shall place a child in the care and custody of a society, and no society shall take a child into its care and custody, except,

- (a) in accordance with this Part; or
- (b) under an agreement made under subsection 29 (1) or 30 (1) (temporary care or special needs agreement) of Part II (Voluntary Access to Services).

Offence

**79.** Where a child is the subject of an order for society supervision, society wardship or Crown wardship under subsection 53 (1), no person shall,

- (a) induce or attempt to induce the child to leave the care of the person with whom the child is placed by the court or by the society, as the case may be;



- (b) detain or harbour the child after the person or society referred to in clause (a) requires that the child be returned;
- (c) interfere with the child or remove or attempt to remove the child from any place; or
- (d) for the purpose of interfering with the child, visit or communicate with the person referred to in clause (a).

**80.** No person shall,

Offence

- (a) knowingly give false information in an application under this Part; or
- (b) obstruct, interfere with or attempt to obstruct or interfere with a child protection worker who is acting under section 40.

**81.—**(1) A person who contravenes,

Offences

- (a) an order for access made under subsection 54 (1);
- (b) subsection 68 (3) (reporting child abuse);
- (c) subsection 70 (5) (disclosure of information obtained by court order);
- (d) subsection 71 (6) or (10) (confidentiality of child abuse register);
- (e) an order made under subsection 72 (8) (amendment of society's records);
- (f) subsection 75 (3) or (5) (leaving child unattended, etc.);
- (g) a restraining order made under subsection 76 (1);
- (h) section 78 (unauthorized placement);
- (i) any provision of section 79 (interference with child, etc.); or
- (j) clause 80 (a) or (b),

and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation is guilty of an offence and on conviction is liable

to a fine of not more than \$1,000 or, except in the case of a contravention of subsection 68 (3), to imprisonment for a term of not more than one year, or to both.

Idem

(2) A person who contravenes subsection 75 (2) (child abuse), and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation is guilty of an offence and on conviction is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than two years, or to both.

Idem

(3) A person who contravenes subsection 41 (8) or 72 (11) (publication of identifying information) or an order prohibiting publication made under clause 41 (7) (c) or subsection 41 (9), and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation, is guilty of an offence and on conviction is liable to a fine of not more than \$10,000 or to imprisonment for a term of not more than three years, or to both.

#### CHILD'S RELIGIOUS FAITH

How child's  
religious  
faith  
determined

**82.**—(1) For the purposes of this section, a child shall be deemed to have the religious faith agreed upon by the child's parent, but where there is no agreement or the court cannot readily determine what the religious faith agreed upon is or whether any religious faith is agreed upon, the court may decide what the child's religious faith is, if any, on the basis of the child's circumstances.

Child's  
wishes to  
be consulted

(2) The court shall consider the child's views and wishes, if they can be reasonably ascertained, in determining what the child's religious faith is, if any.

Religious  
faith of  
child

(3) A Protestant child shall not be committed under this Part to the care of a Roman Catholic society or institution and a Roman Catholic child shall not be committed under this Part to a Protestant society or institution, and a Protestant child shall not be placed in a foster home with a Roman Catholic family and a Roman Catholic child shall not be placed in a foster home with a Protestant family, and, where a child committed under this Part is other than Protestant or Roman Catholic, the child shall be placed where practicable with a family of his or her own religious faith, if any.

Where only  
one society

(4) Subsection (3) does not apply to the commitment of a child to the care of a society in a municipality in which there is only one society.

Director's  
discretion re  
foster  
placement

(5) Where a society,

- (a) is unable to place a child in a suitable foster home within a reasonable time because of the operation of subsection (3); and
- (b) would be able to place the child in a suitable foster home but for the operation of subsection (3),

the society may apply to a Director who may order that subsection (3) does not apply to the child in respect of the placement.

#### INJUNCTIONS

**83.**—(1) The Supreme Court may grant an injunction to restrain a person from contravening section 79, on the society's application. Injunction

(2) The Supreme Court may vary or terminate an order made under subsection (1), on any person's application. Variation,  
etc.

## PART IV

## YOUNG OFFENDERS

Interpretation

**84.** In this Part,

- (a) “bailiff” means a bailiff appointed under clause 86 (1) (c);
- (b) “Board” means the Custody Review Board established under subsection 92 (1);
- (c) “federal Act” means the *Young Offenders Act* (Canada);
- (d) “maximum security place of custody” means a place of secure custody in which the Minister has established a maximum security custody program;
- (e) “medium security place of custody” means a place of secure custody in which the Minister has established a medium security custody program;
- (f) “place of open custody” means a place or facility designated as a place of open custody under subsection 24 (1) of the federal Act and operated by or for the Minister;
- (g) “place of open temporary detention” means a place of temporary detention in which the Minister has established an open detention program;
- (h) “place of secure custody” means a place or facility designated for the secure containment or restraint of young persons under subsection 24 (1) of the federal Act and operated by or for the Minister;
- (i) “place of secure temporary detention” means a place of temporary detention in which the Minister has established a secure detention program;
- (j) “place of temporary detention” means a place or facility designated as a place of temporary detention under subsection 7 (1) of the federal Act and operated by or for the Minister;
- (k) “probation officer” means a probation officer appointed under clause 86 (1) (b);

S.C. 1980-  
81-82-83,  
c. 110

- (l) “provincial director” means a provincial director appointed under clause 86 (1) (a);
- (m) “services and programs” means,
  - (i) prevention programs,
  - (ii) pre-trial detention and supervision programs,
  - (iii) open and secure custody programs,
  - (iv) probation services,
  - (v) programs for the administration and supervision of dispositions, and
  - (vi) other related services and programs;
- (n) “young person” means a child as defined in paragraph 6 of subsection 3 (1) who is, or, in the absence of evidence to the contrary, appears to be,
  - (i) twelve years of age, or more, but
  - (ii) under sixteen years of age,

and includes a person sixteen years of age or more charged with having committed an offence while he or she was twelve years of age or more but under sixteen years of age.

#### PROGRAMS AND OFFICERS

**85.—**(1) The Minister may,

Services  
and  
programs

- (a) establish, operate and maintain services and programs; and
- (b) make agreements with persons for the provision of services and programs,

for or on behalf of young persons for the purposes of the federal Act and the *Provincial Offences Act*, and may make payments for those services and programs out of legislative appropriations.

R.S.O. 1980,  
c. 400

(2) The Minister may establish,

Secure  
and open  
temporary  
detention  
programs



- (a) secure temporary detention programs, in which restrictions are continuously imposed on the liberty of young persons by physical barriers, close staff supervision or limited access to the community; and
- (b) open temporary detention programs, in which restrictions that are less stringent than in a secure temporary detention program are imposed on the liberty of young persons,

in places of temporary detention.

Maximum  
and medium  
security  
custody  
programs

- (3) The Minister may establish,
- (a) maximum security custody programs, in which restrictions are continuously imposed on the liberty of young persons by physical barriers, close staff supervision or limited access to the community; and
  - (b) medium security custody programs, in which restrictions that are less stringent than in a maximum security custody program are imposed on the liberty of young persons,

in places of secure custody.

Open custody  
programs

- (4) The Minister may establish open custody programs in places of open custody.

Where  
locking up  
permitted

- (5) A place of secure custody and a place of secure temporary detention may be locked for the detention of young persons.

Appointments  
by Minister

**86.**—(1) The Minister may appoint any person as,

- (a) a provincial director, to perform any or all of the duties and functions of a provincial director,
  - (i) under the federal Act, and
  - (ii) under the regulations;
- (b) a probation officer, to perform any or all of the duties and functions,
  - (i) of a youth worker under the federal Act, and
  - (ii) of a probation officer for the purpose of dealing with young persons under the *Provincial Offences Act*, and

(iii) of a probation officer under the regulations;  
and

(c) a bailiff, to perform any or all of the duties and functions of a bailiff under the regulations.

(2) The Minister may set out in an appointment made under subsection (1) any conditions or limitations to which it is subject.

Limitations,  
etc., on  
appointments

(3) While performing their duties and functions, a probation officer appointed under clause (1) (b) and a bailiff appointed under clause (1) (c) have the powers of a peace officer.

Probation  
officer and  
bailiff have  
powers of  
peace officer

(4) The remuneration and expenses of a person appointed under subsection (1) who is not a public servant under the *Public Service Act* shall be fixed by the Minister and shall be paid out of legislative appropriations.

Remuneration  
and expenses  
  
R.S.O. 1980,  
c. 418

**87.**—(1) With the approval of a provincial director, services may be provided under this Part to a person sixteen years of age or more who is a young person within the meaning of the federal Act but not within the meaning of clause 84 (n).

Approval of  
provincial  
director for  
provision of  
services to  
person over  
sixteen

(2) A person who is the subject of an approval under subsection (1) shall be deemed to be a young person for the purposes of this Part.

Person  
deemed  
to be  
young  
person

**88.** A person in charge of a service or program provided under subsection 85 (1), a person in charge of a place of temporary detention, open custody or secure custody, a bailiff and a probation officer,

Reports  
and  
information

(a) shall make the prescribed reports and furnish the prescribed information to the Minister, in the prescribed form and at the prescribed intervals; and

(b) shall make a report to the Minister whenever the Minister requests it, in the form and containing the information specified by the Minister.

#### TEMPORARY DETENTION

**89.**—(1) A young person who is detained under the federal Act in a place of temporary detention shall be detained in a place of open temporary detention unless a provincial director determines under subsection (2) that the young person is to be detained in a place of secure temporary detention.

Open  
detention  
unless  
provincial  
director  
determines  
otherwise

Where  
secure  
detention  
available

(2) A provincial director may detain a young person in a place of secure temporary detention if the young person is charged with an offence for which an adult would be liable to imprisonment for five years or more and,

- (a) the offence includes causing or attempting to cause serious bodily harm to another person;
- (b) the young person has, at any time, failed to appear in court when required to do so under the federal Act or the *Juvenile Delinquents Act* (Canada) or escaped or attempted to escape from lawful detention; or
- (c) the young person has, within the twelve months immediately preceding the offence on which the current charge is based, been convicted of an offence for which an adult would be liable to imprisonment for five years or more,

R.S.C. 1970,  
c. J-3

where the provincial director is satisfied that it is necessary to detain the young person in a place of secure temporary detention,

- (d) to ensure the young person's attendance in court; or
- (e) to protect the public interest or safety.

Idem

(3) Despite subsection (1), a young person who is apprehended because he or she has left or has not returned to a medium security or maximum security place of custody may be detained in a place of secure temporary detention until he or she is returned to the first-named place of custody.

Idem

(4) Despite subsection (1), a young person who is detained under the federal Act in a place of temporary detention may be detained in a place of secure temporary detention for a period not exceeding twenty-four hours while a provincial director makes a determination in respect of the young person under subsection (2).

Review  
by youth  
court  
R.S.C. 1970,  
c. C-34

(5) A young person who is being detained in a place of secure temporary detention and is brought before a youth court for a review under the *Criminal Code* (Canada) may request that the youth court review the level of his or her detention, and the youth court may confirm the provincial director's decision under subsection (2) or may direct that the young person be transferred to a place of open temporary detention.

## CUSTODY

**90.**—(1) A young person who is committed to secure custody under the federal Act shall be held in a medium security place of custody unless a provincial director determines under subsection (2) that the young person is to be held in a maximum security place of custody.

Medium rather than maximum security custody unless provincial director determines otherwise

(2) A provincial director may place a young person in or transfer a young person to a maximum security place of custody if the young person is committed to secure custody under the federal Act for an offence for which an adult would be liable to imprisonment for five years or more and,

Where maximum security custody available

- (a) the offence for which the young person is committed to secure custody includes causing or attempting to cause serious bodily harm to another person; or
- (b) the young person has, within the twelve months immediately preceding the offence for which he or she is committed to secure custody,
  - (i) been held in a maximum security place of custody, or
  - (ii) been found guilty of an offence for which an adult would be liable to imprisonment for five years or more,

where the provincial director is satisfied that it would not be appropriate to hold the young person in a medium security place of custody, having regard to,

- (c) the young person's age and previous history;
- (d) the circumstances of the commission of the offence for which the young person is committed to secure custody;
- (e) the contents of a pre-disposition report;
- (f) the needs of the young person; and
- (g) the need to protect the public interest and safety.

(3) A provincial director may transfer a young person from a maximum security place of custody to a medium security place of custody if the provincial director is satisfied that the

Transfer from maximum to medium security custody



transfer is justified because the young person has made sufficient progress or for some other appropriate reason.

Reasons

(4) A provincial director who makes a determination under this section shall give written reasons for the determination to the young person and to the persons in charge of the places of custody from and to which the young person is transferred.

Young  
persons in  
open custody  
R.S.O. 1980,  
c. 400

**91.** Where a young person is sentenced to a term of imprisonment for breach of probation under clause 75 (d) of the *Provincial Offences Act*, to be served in open custody as set out in section 91k of that Act,

- (a) the young person shall be held in a place of open custody specified by a provincial director; and
- (b) the provisions of section 35 (temporary release) of the federal Act apply with necessary modifications.

CUSTODY REVIEW BOARD

Custody  
Review  
Board

**92.**—(1) The Custody Review Board is established, composed of the prescribed number of members appointed by the Lieutenant Governor in Council, and has the powers and duties given to it by this Part and the regulations.

Chairman  
and vice-  
chairmen

(2) The Lieutenant Governor in Council may appoint a member of the Board as chairman and may appoint one or more other members as vice-chairmen.

Term

(3) A member of the Board shall hold office for the prescribed term.

Quorum

(4) The prescribed number of members of the Board are a quorum.

Remuneration

(5) The chairman and vice-chairmen and the other members of the Board shall be paid the *per diem* allowances determined by the Lieutenant Governor in Council and are entitled to their reasonable and necessary travelling and living expenses while attending meetings or otherwise engaged in the work of the Board.

Duties of  
Board

(6) The Board shall conduct reviews under section 93 and perform such other duties as are assigned to it by the regulations.

Application  
to Board

**93.**—(1) A young person may apply to the Board for a review of,



- (a) a provincial director's decision to hold the young person in or transfer the young person to a maximum security place of custody;
- (b) the particular place where the young person is held or to which the young person has been transferred;
- (c) a provincial director's refusal to authorize the young person's temporary release under section 35 of the federal Act; or
- (d) the young person's transfer from a place of open custody to a place of secure custody under subsection 24 (9) of the federal Act,

within thirty days of the decision, placement or transfer, as the case may be.

(2) The Board shall conduct a review with respect to an application made under subsection (1) and may do so by holding a hearing. Duty of Board

(3) The Board shall advise the young person whether it intends to hold a hearing or not within ten days of receiving the young person's application. Idem

(4) The *Statutory Powers Procedure Act* does not apply to a hearing held under subsection (2). R.S.O. 1980, c. 484, does not apply

(5) The Board shall complete its review and make a determination within thirty days of receiving a young person's application, unless, Idem

- (a) the Board holds a hearing with respect to the application; and
- (b) the young person and the provincial director whose decision is being reviewed consent to a longer period for the Board's determination.

(6) After conducting a review under subsection (2), the Board may, Board's recommendations

- (a) recommend to the provincial director,
  - (i) that the young person be transferred to a medium security place of custody,
  - (ii) where the Board is of the opinion that the place where the young person is held or to

which he or she has been transferred is not appropriate to meet the young person's needs, that the young person be transferred to another place,

- (iii) that the young person's temporary release be authorized under section 35 of the federal Act, or
- (iv) where the young person has been transferred under subsection 24 (9) of the federal Act, that the young person be returned to a place of open custody; or

(b) confirm the decision, placement or transfer.

#### APPREHENSION OF YOUNG PERSONS WHO ARE ABSENT FROM CUSTODY WITHOUT PERMISSION

Apprehension of young person absent from place of temporary detention  
R.S.O. 1980, c. 400

**94.**—(1) A peace officer, the person in charge of a place of temporary detention or that person's delegate, who believes on reasonable and probable grounds that a young person detained under the federal Act or the *Provincial Offences Act* in a place of temporary detention,

- (a) has left the place without the consent of the person in charge; and
- (b) fails or refuses to return there,

may apprehend the young person with or without a warrant and,

- (c) take the young person to a place of temporary detention to be detained until he or she can be returned;
- (d) arrange for the young person to be returned; or
- (e) return the young person,

to the first-mentioned place of temporary detention.

Idem:  
place of open custody

(2) A peace officer, the person in charge of a place of open custody or that person's delegate, who believes on reasonable and probable grounds that a young person held in a place of open custody as described in section 91,

- (a) has left the place without the consent of the person in charge and fails or refuses to return there; or

- (b) fails or refuses to return to the place of open custody upon completion of a period of temporary release under clause 91 (b),

may apprehend the young person with or without a warrant and,

- (c) take the young person to a place of temporary detention to be detained until he or she can be returned;
- (d) arrange for the young person to be returned; or
- (e) return the young person,

to the first-mentioned place of open custody.

(3) A young person who is detained in a place of temporary detention under this section shall be returned to the place from which he or she is absent, as soon as possible, but in any event within forty-eight hours after being detained.

Young person to be returned within forty-eight hours

(4) A justice of the peace who is satisfied on the basis of a sworn information that there are reasonable and probable grounds to believe that a young person held in a place of temporary detention or open custody,

Warrant to apprehend young person

- (a) has left the place without the consent of the person in charge and fails or refuses to return there; or
- (b) fails or refuses to return to a place of open custody upon completion of a period of temporary release under clause 91 (b),

may issue a warrant authorizing a peace officer, the person in charge of the place of temporary detention or open custody or that person's delegate to apprehend the young person.

(5) A warrant issued under subsection (4) authorizes a person to whom it is directed to enter any premises where he or she reasonably believes the young person to be, by force if necessary, and to search for and remove the young person.

Authority to enter, etc.

(6) A person authorized to enter premises by a warrant issued under subsection (4) shall exercise the power of entry in accordance with the regulations.

Regulations re exercise of power of entry

## PART V

## RIGHTS OF CHILDREN

Interpretation

**95.** In this Part, “child in care” means a child who is receiving residential services from a service provider and includes,

- (a) a child who is in the care of a foster parent; and
- (b) a child who is detained in a place of temporary detention, committed to secure or open custody under the *Young Offenders Act* (Canada), or held in a place of open custody under section 91 of Part IV (Young Offenders).

S.C. 1980-81-  
82-83,  
c. 110

## LOCKING UP

Locking up  
restricted

**96.**—(1) No service provider shall detain a child or permit a child to be detained in locked premises in the course of the provision of a service to the child, except as Part IV (Young Offenders) and Part VI (Extraordinary Measures) authorize.

Application  
of  
subs. (1)

(2) Subsection (1) does not prohibit the routine locking of premises for security at night.

## CORPORAL PUNISHMENT

No corporal  
punishment

**97.** No service provider or foster parent shall inflict corporal punishment on a child or permit corporal punishment to be inflicted on a child in the course of the provision of a service to the child.

## OFFICE OF CHILD AND FAMILY SERVICE ADVOCACY

Office of  
Child and  
Family  
Service  
Advocacy

**98.** The Minister may establish an Office of Child and Family Service Advocacy to,

- (a) co-ordinate and administer a system of advocacy, except for advocacy before a court, on behalf of children and families who receive or seek approved services or services purchased by approved agencies;
- (b) advise the Minister on matters and issues concerning the interests of those children and families; and
- (c) perform any similar functions given to it by this Act or the regulations or another Act or the regulations made under another Act.



## RIGHTS OF CHILDREN IN CARE

**99.**—(1) A child in care has a right,

Rights of  
communi-  
cation,  
etc.

(a) to speak in private with, visit and receive visits from members of his or her family regularly, subject to subsection (2);

(b) to speak in private with and receive visits from,

(i) the child's solicitor,

(ii) another person representing the child, including an advocate appointed for the child by the Office of Child and Family Service Advocacy referred to in section 98,

(iii) the Ombudsman appointed under the *Ombudsman Act* and members of the Ombudsman's staff, and

R.S.O. 1980,  
c. 325

(iv) a member of the Legislative Assembly of Ontario or of the Parliament of Canada; and

(c) to send and receive mail that is not read, examined or censored by another person, subject to subsection (3).

(2) A child in care who is a Crown ward is not entitled as of right to speak with, visit or receive visits from a member of his or her family, except under an order for access made under Part III (Child Protection).

When child  
a Crown  
ward

(3) Mail to a child in care,

Opening,  
etc.,  
of mail  
to child

(a) may be opened by the service provider or a member of the service provider's staff in the child's presence and may be inspected for articles prohibited by the service provider;

(b) where the service provider believes on reasonable grounds that the contents of the mail may cause the child physical or emotional harm, may be examined or read by the service provider or a member of the service provider's staff in the child's presence, subject to clause (c);

(c) shall not be examined or read by the service provider or a member of the service provider's staff if it is to or from the child's solicitor; and



- (d) shall not be censored or withheld from the child, except that articles prohibited by the service provider may be removed from the mail and withheld from the child.

Personal  
liberties

**100.** A child in care has a right,

- (a) to have reasonable privacy and possession of his or her own personal property; and
- (b) to receive the religious instruction and participate in the religious activities of his or her choice, subject to section 102.

Plan of  
care

**101.**—(1) A child in care has a right to a plan of care designed to meet the child's particular needs, which shall be prepared within thirty days of the child's admission to the residential placement.

Rights  
to care

(2) A child in care has a right,

- (a) to participate in the development of the child's individual plan of care and in any changes made to it;
- (b) to receive meals that are well-balanced, of good quality and appropriate for the child;
- (c) to be provided with clothing that is of good quality and appropriate for the child, given the child's size and activities and prevailing weather conditions;
- (d) to receive medical and dental care, subject to section 102, at regular intervals and whenever required, in a community setting whenever possible;
- (e) to receive an education that corresponds to the child's aptitudes and abilities, in a community setting whenever possible; and
- (f) to participate in recreational and athletic activities that are appropriate for the child's aptitudes and interests, in a community setting whenever possible.

Parental  
consent,  
etc.

**102.** Subject to subsection 47 (4) and sections 58 and 59 (temporary order, society and Crown wards) of Part III (Child Protection), the parent of a child in care retains any right that he or she may have,

- (a) to direct the child's education and religious upbringing; and

- (b) to give or refuse consent to medical treatment for the child.

**103.** A child in care has a right to be consulted and to express his or her views, to the extent that is practical given the child's level of understanding, whenever significant decisions concerning the child are made, including decisions with respect to medical treatment, education and religion and decisions with respect to the child's discharge from the placement or transfer to another residential placement.

Right to  
be heard

**104.** A child in care has a right to be informed, in language suitable for the child's level of understanding, of,

Right to  
be informed

- (a) the child's rights under this Part;
- (b) the internal complaints procedure established under subsection 105 (1) and the further review available under section 106;
- (c) the existence of the Office of Child and Family Service Advocacy referred to in section 98;
- (d) the review procedures available for children twelve years of age or older under sections 34, 35 and 36 of Part II (Voluntary Access to Services);
- (e) the review procedures available under section 93 of Part IV (Young Offenders), in the case of a child who is detained in a place of temporary detention, committed to secure or open custody under the *Young Offenders Act* (Canada), or held in a place of open custody under section 91 of Part IV (Young Offenders);
- (f) the child's responsibilities while in the placement; and
- (g) the rules governing day-to-day operation of the residential service, including disciplinary procedures,

S.C. 1980-  
81-82-83, c.  
110

upon admission to the residential placement, to the extent that is practical given the child's level of understanding.

#### COMPLAINT AND REVIEW PROCEDURES

**105.—**(1) A service provider who provides residential services to children or places children in residential placements shall establish a written procedure, in accordance with the regulations, for hearing and dealing with complaints regarding

Internal  
complaints  
procedure

alleged violations of the rights under this Part of children in care.

Idem

(2) A service provider shall conduct a review or ensure that a review is conducted, in accordance with the procedure established under subsection (1), on the complaint of,

- (a) a child in care;
- (b) the child's parent; or
- (c) another person representing the child,

and shall seek to resolve the complaint.

Further  
review

**106.**—(1) Where a person referred to in subsection 105 (2) who makes a complaint and is not satisfied with the result of the review conducted under that subsection requests in writing that the Minister appoint a person to conduct a further review of the complaint, the Minister shall appoint a person who is not employed by the service provider to do so.

Idem

(2) A person appointed under subsection (1) shall review the complaint in accordance with the regulations and may, but is not required to, do so by holding a hearing.

R.S.O. 1980,  
c. 484 does  
not apply

(3) The *Statutory Powers Procedure Act* does not apply to a hearing held under subsection (2).

Powers of  
appointed  
person

(4) A person appointed under subsection (1) has, for the purposes of the review, all the powers of a program supervisor appointed under subsection 5 (2) of Part I (Flexible Services).

Review and  
report within  
thirty days

(5) A person appointed under subsection (1) shall, within thirty days after the day of the appointment, complete the review, set out in a report his or her findings and recommendations, including the reasons for not holding a hearing if none was held, and provide copies of the report to,

- (a) the person who made the complaint;
- (b) the service provider; and
- (c) the Minister.

Minister  
to advise  
persons  
affected  
of any  
decision

**107.**—(1) Where the Minister decides to take any action with respect to a complaint after receiving a report under subsection 106 (5), the Minister shall advise the person who made the complaint and the service provider of the decision.

(2) The Minister's decision referred to in subsection (1) <sup>Remedies preserved</sup>  
does not affect any other remedy that may be available.

## PART VI

## EXTRAORDINARY MEASURES

Interpretation

**108.** In this Part,

- (a) “administrator” means the person in charge of a secure treatment program;
- (b) “intrusive procedure” means,
  - (i) a mechanical means of controlling behaviour,
  - (ii) an aversive stimulation technique, or
  - (iii) any other procedure,that is prescribed as an intrusive procedure;
- (c) “mental disorder” means a substantial disorder of emotional processes, thought or cognition which grossly impairs a person’s capacity to make reasoned judgments;
- (d) “psychotropic drug” means a drug or combination of drugs prescribed as a psychotropic drug;
- (e) “review team” means an interdisciplinary review team established under subsection 123 (1);
- (f) “secure isolation room” means a locked room approved under subsection 120 (1) for use for the secure isolation of children;
- (g) “secure treatment program” means a program established or approved by the Minister under subsection 109 (1).

## SECURE TREATMENT PROGRAMS

Minister may  
establish  
or approve  
programs**109.—**(1) The Minister may,

- (a) establish, operate and maintain; or
- (b) approve,

programs for the treatment of children with mental disorders, in which continuous restrictions are imposed on the liberty of the children.



(2) The Minister may impose terms and conditions on an approval given under subsection (1) and may vary or amend the terms and conditions or impose new terms and conditions at any time.

Terms and  
conditions

(3) No child shall be admitted to a secure treatment program except by a court order under section 113 (commitment to secure treatment program) or under section 118 (emergency admission).

Admission  
of children

(4) The premises of a secure treatment program may be locked for the detention of children.

Locking up  
permitted

#### COMMITMENT TO SECURE TREATMENT

**110.**—(1) Any one of the following persons may, with the administrator's written consent, apply to the court for an order for the child's commitment to a secure treatment program:

Who may  
apply for  
order for  
child's  
commitment

1. Where the child is less than sixteen years of age,
  - i. the child's parent,
  - ii. a person other than an administrator who is caring for the child, if the child's parent consents to the application, or
  - iii. a society that has custody of the child under an order made under Part III (Child Protection).
2. Where the child is sixteen years of age or more,
  - i. the child,
  - ii. the child's parent, if the child consents to the application, or
  - iii. a physician.

(2) Where an application is made under subsection (1), the court shall deal with the matter,

Time for  
hearing

- (a) where the child has been admitted to a secure treatment program under section 118 (emergency), within five days of the making of the application; or
- (b) where the child has not been admitted to a secure treatment program under section 118, within ten

days of the making of an order under subsection (5) (legal representation) or, where no such order is made, within ten days of the making of the application.

Time for  
determination

(3) Where the child who is the subject of an application under subsection (1) has been admitted to a secure treatment program under section 118, the court shall dispose of the application within forty-five days of the making of the application, subject to subsection (4).

Adjournments

(4) The court may adjourn the hearing of an application but shall not adjourn it for more than thirty days unless the applicant and the child consent to the longer adjournment.

Legal  
representation  
of child

(5) Where an application is made under subsection (1) in respect of a child who does not have legal representation, the court shall, as soon as practicable and in any event before the hearing of the application, direct that legal representation be provided for the child.

Hearing  
private

(6) A hearing under this section shall be held in the absence of the public and no media representative shall be permitted to attend.

Child  
entitled  
to be  
present

(7) The child who is the subject of an application under subsection (1) is entitled to be present at the hearing unless,

- (a) the court is satisfied that being present at the hearing would cause the child emotional harm; or
- (b) the child, after obtaining legal advice, consents in writing to the holding of the hearing in his or her absence.

Court may  
require  
child's  
presence

(8) The court may require a child who has consented to the holding of the hearing in his or her absence under clause (7) (b) to be present at all or part of the hearing.

Child may  
waive  
hearing of  
oral  
evidence

**111.**—(1) Where an application is made under subsection 110 (1), the court shall deal with the matter by holding a hearing and shall hear oral evidence unless the child, after obtaining legal advice, consents in writing to the making of an order under subsection 113 (1) without the hearing of oral evidence, and the consent is filed with the court.

Court may  
hear oral  
evidence  
despite  
consent

(2) The court may hear oral evidence although the child has given a consent under subsection (1).

(3) A child’s consent under subsection (1) is not effective for more than a single 180 day period referred to in subsection 114 (1) (period of commitment). Time limitation

**112.**—(1) The court may, at any time after an application is made under subsection 110 (1), order that the child attend within a specified time for an assessment before a specified person who is qualified, in the court’s opinion, to perform an assessment to assist the court to determine whether the child should be committed to a secure treatment program and has consented to perform the assessment. Assessment

(2) The person performing an assessment under subsection (1) shall make a written report of the assessment to the court within the time specified in the order, which shall not be more than thirty days unless the court is of the opinion that a longer assessment period is necessary. Report

(3) The court shall not order an assessment to be performed by a person who provides services in the secure treatment program to which the application relates. Who may not perform assessment

(4) The court shall provide a copy of the report to, Copies of report

- (a) the applicant;
- (b) the child, subject to subsection (6);
- (c) the child’s solicitor;
- (d) a parent appearing at the hearing;
- (e) the administrator of the secure treatment program; and
- (f) where the child is an Indian or a native person, a representative chosen by the child’s band or native community.

(5) The court may cause a copy of the report to be given to a parent who does not attend the hearing but is, in the court’s opinion, actively interested in the proceedings. Idem

(6) The court may withhold all or part of the report from the child where the court is satisfied that disclosure of all or part of the report to the child would cause the child emotional harm. Court may withhold report from child

Commitment  
to secure  
treatment:  
criteria

**113.**—(1) The court may order that a child be committed to a secure treatment program only where the court is satisfied that,

- (a) the child has a mental disorder;
- (b) the child has, as a result of the mental disorder, within the forty-five days immediately preceding,

- (i) the application under subsection 110 (1),

S.C. 1980-  
81-82-83,  
c. 110  
R.S.O.1980,  
c. 400

- (ii) the child's detention or custody under the *Young Offenders Act* (Canada) or under the *Provincial Offences Act*, or

R.S.O.1980,  
c. 262

- (iii) the child's admission to a psychiatric facility under the *Mental Health Act* as an involuntary patient,

caused or attempted to cause serious bodily harm to himself, herself or another person;

- (c) the child has,
  - (i) within the twelve months immediately preceding the application, but on another occasion than that referred to in clause (b), caused, attempted to cause or by words or conduct made a substantial threat to cause serious bodily harm to himself, herself or another person, or
  - (ii) in committing the act or attempt referred to in clause (b), caused or attempted to cause a person's death;
- (d) the secure treatment program would be effective to prevent the child from causing or attempting to cause serious bodily harm to himself, herself or another person;
- (e) treatment appropriate for the child's mental disorder is available at the place of secure treatment to which the application relates; and
- (f) no less restrictive method of providing treatment appropriate for the child's mental disorder is appropriate in the circumstances.



(2) Where the child is less than twelve years old, the court shall not make an order under subsection (1) unless the Minister consents to the child's commitment.

Where child  
under twelve

(3) Where the applicant is a physician, the court shall not make an order under subsection (1) unless the court is satisfied that the applicant believes the criteria set out in that subsection are met.

Additional  
requirement  
where  
applicant  
is physician

**114.**—(1) Where the court makes an order under subsection 113 (1), the child shall be committed to the secure treatment program for a period of 180 days, subject to subsection (2).

Period of  
commitment

(2) Where a child is committed to a secure treatment program on a society's application, the child shall be released on a day sixty days after the child's admission to the secure treatment program unless before that day,

Where  
society is  
applicant

- (a) the child's parent consents to the child's commitment for a 180 day period; or
- (b) the child is made a Crown or society ward under Part III (Child Protection).

(3) In the calculation of a child's period of commitment, time spent in the secure treatment program before an order has been made under section 113 (commitment) or pending an application under section 116 (extension) shall be counted.

How time  
calculated

(4) A person who is the subject of an order made under subsection 113 (1) or 116 (4) may be kept in the secure treatment program after attaining the age of eighteen years, until the order expires.

Where order  
expires after  
eighteenth  
birthday

**115.**—(1) Where the court makes an order under subsection 113 (1) or 116 (4), the court shall give,

Reasons,  
etc.

- (a) reasons for its decision;
- (b) a statement of the plan, if any, for the child's care on release from the secure treatment program; and
- (c) a statement of the less restrictive alternatives considered by the court, and the reasons for rejecting them.

(2) Where no plan for the child's care on release from the secure treatment program is available at the time of the order,

Plan for  
care on  
release



the administrator shall, within ninety days of the date of the order, prepare such a plan and file it with the court.

#### EXTENSION OF PERIOD OF COMMITMENT

Who may  
apply for  
extension

**116.**—(1) Where a child is the subject of an order made under subsection 113 (1) (commitment) or subsection (4),

- (a) a person referred to in subsection 110 (1), with the administrator's written consent; or
- (b) the administrator, with a parent's written consent or, where the child is in a society's lawful custody, the society's consent,

may, before the expiry of the period of commitment, apply for an order extending the child's commitment to the secure treatment program.

Child may  
be kept in  
program  
while  
application  
pending

ss. 110 (4-8),  
111, 112  
apply

(2) Where an application is made under subsection (1), the child may be kept in the secure treatment program until the application is disposed of.

(3) Subsections 110 (4), (5), (6), (7) and (8) (hearing) and sections 111 (child's waiver) and 112 (assessment) apply with necessary modifications to an application made under subsection (1).

Criteria  
for  
extension

(4) The court may make an order extending a child's commitment to a secure treatment program only where the court is satisfied that,

- (a) the child has a mental disorder;
- (b) the secure treatment program would be effective to prevent the child from causing or attempting to cause serious bodily harm to himself, herself or another person;
- (c) no less restrictive method of providing treatment appropriate for the child's mental disorder is appropriate in the circumstances;
- (d) the child is receiving the treatment proposed at the time of the original order under subsection 113 (1), or other appropriate treatment; and
- (e) there is an appropriate plan for the child's care on release from the secure treatment program.

(5) Where the court makes an order under subsection (4), the child shall be committed to the secure treatment program for a further period of 180 days. Period of extension

#### RELEASE BY ADMINISTRATOR

**117.**—(1) The administrator may release a child from a secure treatment program unconditionally where the administrator, Unconditional release by administrator

- (a) has given the person with lawful custody of the child reasonable notice of the intention to release him or her; and
- (b) is satisfied that,
  - (i) the child no longer requires the secure treatment program, and
  - (ii) there is an appropriate plan for the child's care on release from the secure treatment program.

(2) The administrator may release a child from a secure treatment program temporarily for medical or compassionate reasons, or for a trial placement in an open setting, for such period and on such terms and conditions as the administrator determines. Conditional release

(3) Subsections (1) and (2) apply despite an order made under subsection 113 (1) (commitment) or 116 (4) (extension). Administrator may release despite court order

#### EMERGENCY ADMISSION

**118.**—(1) Any one of the following persons may apply to the administrator for the emergency admission of a child to a secure treatment program: Who may apply for emergency admission

1. Where the child is less than sixteen years of age,
  - i. the child's parent,
  - ii. a person who is caring for the child with a parent's consent,
  - iii. a child protection worker who has apprehended the child under section 40 of Part III (Child Protection), or

iv. a society that has custody of the child under an order made under Part III.

2. Where the child is sixteen years of age or more,

i. the child,

ii. the child's parent, if the child consents to the application, or

iii. a physician.

Criteria  
for  
admission

(2) The administrator may admit a child to the secure treatment program on an application under subsection (1) where the administrator believes on reasonable grounds that,

(a) the child has a mental disorder;

(b) the child has, as a result of the mental disorder, during the seven days immediately preceding the day of the application, caused or attempted to cause serious bodily harm to himself, herself or another person;

(c) the secure treatment program would be effective to prevent the child from causing or attempting to cause serious bodily harm to himself, herself or another person;

(d) treatment appropriate for the child's mental disorder is available at the place of secure treatment to which the application relates; and

(e) no less restrictive method of providing treatment appropriate for the child's mental disorder is appropriate in the circumstances.

Admission  
on consent

(3) The administrator may admit the child under subsection (2) although the criterion set out in clause (2) (b) is not met, where,

(a) the other criteria set out in subsection (2) are met;

(b) the child, after obtaining legal advice, consents to his or her admission; and

(c) if the child is less than sixteen years of age, the child's parent or, where the child is in a society's lawful custody, the society consents to the child's admission.

(4) Where the child is less than twelve years old, the administrator shall not admit the child under subsection (2) unless the Minister consents to the child's admission.

Where child under twelve

(5) Where the applicant is a physician, the administrator shall not admit the child under subsection (2) unless the administrator is satisfied that the applicant believes the criteria set out in that subsection are met.

Additional requirement where applicant is physician

(6) As soon as practicable, but in any event within five days after a child is admitted to a secure treatment program under subsection (2),

Five day limit

- (a) the child shall be released; or
- (b) an application shall be made under section 110 for an order for the child's commitment to the secure treatment program.

#### POLICE ASSISTANCE

**119.** A peace officer may take a child to a place where there is a secure treatment program,

Police may take child for secure treatment

- (a) for emergency admission, at the request of an applicant referred to in subsection 118 (1); or
- (b) where an order for the child's commitment to the secure treatment program has been made under section 113.

#### SECURE ISOLATION

**120.—**(1) A Director may approve a locked room that complies with the prescribed standards and is located in premises where an approved service or a service purchased by an approved agency is provided, for use for the secure isolation of children, on such terms and conditions as the Director determines.

Director's approval

(2) Where a Director is of the opinion that a secure isolation room is unnecessary or is being used in a manner that contravenes this Part or the regulations, the Director may withdraw the approval given under subsection (1) and shall give the affected service provider notice of the decision, with reasons.

Withdrawal of approval

**121.—**(1) No service provider or foster parent shall isolate in a locked place a child who is in his or her care or permit

Prohibition



the child to be isolated in a locked place, except in accordance with this section and the regulations.

Secure treatment, secure custody and secure temporary detention

(2) Subsection (1) does not prohibit the routine locking at night of rooms in the premises of secure treatment programs or in places of secure custody and places of secure temporary detention under Part IV (Young Offenders).

Criteria for use of secure isolation

(3) A child may be placed in a secure isolation room where,

- (a) in the service provider's opinion,
  - (i) the child's conduct indicates that the child is likely, in the immediate future, to cause serious property damage or to cause another person serious bodily harm, and
  - (ii) no less restrictive method of restraining the child is practicable; and
- (b) where the child is less than twelve years of age, a Director gives permission for the child to be placed in a secure isolation room because of exceptional circumstances.

One hour limit

(4) A child who is placed in a secure isolation room shall be released within one hour unless the person in charge of the premises approves the child's longer isolation in writing and records the reasons for not restraining the child by a less restrictive method.

Continuous observation of child

(5) The service provider shall ensure that a child who is placed in a secure isolation room is continuously observed by a responsible person.

Review

(6) Where a child is kept in a secure isolation room for more than one hour, the person in charge of the premises shall review the child's isolation at prescribed intervals.

Release

(7) A child who is placed in a secure isolation room shall be released as soon as the person in charge is satisfied that the child is not likely to cause serious property damage or serious bodily harm in the immediate future.

Maximum periods

(8) In no event shall a child be kept in a secure isolation room for a period or periods that exceed an aggregate of eight hours in a given twenty-four hour period or an aggregate of twenty-four hours in a given week.



**122.** A person in charge of premises containing a secure isolation room shall review, Review of use of secure isolation

- (a) the need for the secure isolation room; and
- (b) the prescribed matters,

every three months from the date on which the secure isolation room is approved under subsection 120 (1), shall make a written report of each review to a Director and shall make such additional reports as are prescribed.

REVIEW TEAMS

**123.—**(1) A service provider who is approved under subsection 124 (1) shall establish an interdisciplinary review team with the duty of reviewing and approving or refusing the proposed use of intrusive procedures. Review team

- (2) A review team shall consist of, Idem
  - (a) persons employed by the service provider; and
  - (b) one person who is not employed by the service provider and is approved by the Minister,

and may also include a legally qualified medical practitioner.

(3) Any three members of a review team may review and approve or refuse the proposed use of an intrusive procedure. Panel

(4) A review team shall make a report to the service provider concerning every review conducted under subsection (3) and subsection 127 (1) (review of certain recommended procedures). Report to service provider

(5) A review team shall make reports of its activities to the Minister at the prescribed intervals. Report to Minister

INTRUSIVE PROCEDURES

**124.—**(1) The Minister may approve a service provider for the use of the intrusive procedures specified in the approval and may set out in the approval any conditions and limitations to which it is subject. Approval by Minister

(2) The Minister may at any time revoke, suspend or amend an approval given under subsection (1) and shall give the affected service provider notice, with reasons, of the Minister's decision. Revocation, etc., of approval

Intrusive  
procedures  
restricted

**125.—**(1) No service provider shall use or permit the use of an intrusive procedure in respect of a child in the service provider's care, except in accordance with this section.

Exception

(2) Subsection (1) does not prohibit the use of restraints that are reasonably necessary for the secure transportation or transfer of a child who is detained or has been committed to custody under the *Young Offenders Act* (Canada) or to whom section 91 of Part IV (Young Offenders) (open custody) applies.

S.C. 1980-  
81-82-83, c.  
110

When  
service  
provider  
may use  
or permit  
intrusive  
procedure

(3) A service provider who is approved under subsection 124 (1) may use or permit the use of an intrusive procedure in respect of a child in the service provider's care only,

- (a) if the intrusive procedure is specified in the approval;
- (b) in accordance with the conditions and limitations set out in the Minister's approval; and
- (c) with the approval, obtained in advance and not more than thirty days before the intrusive procedure is used, of the service provider's review team.

Criteria

(4) A review team shall not approve the use of an intrusive procedure in respect of a child unless,

- (a) if the child is sixteen years of age or more, the child consents to its use;
- (b) if the child is less than sixteen years of age, the child's parent or, where the child is in a society's lawful custody, the society consents to its use;
- (c) the child's behaviour warrants its use;
- (d) at least one less intrusive alternative has been attempted without success in improving the child's behaviour;
- (e) no other less intrusive alternative is practicable; and
- (f) there are reasonable grounds to believe that the procedure would improve the child's behaviour.

Idem

(5) A review team shall not approve the use of an intrusive procedure in respect of a child who is less than sixteen years of age or lacks capacity within the meaning of section 4 with-

out first considering the child's views and preferences, where they can be reasonably ascertained.

(6) Where,

Emergency

- (a) a service provider who is approved under subsection 124 (1) believes on reasonable grounds that delay in the use of an intrusive procedure in respect of a child in the service provider's care would cause the child or another person serious mental or physical harm;
- (b) the intrusive procedure is specified in the Minister's approval;
- (c) if the child is sixteen years of age or more, the child consents to the use of the intrusive procedure or apparently does not have capacity; and
- (d) if the child is less than sixteen years of age, the child's parent or, where the child is in a society's lawful custody, the society,
  - (i) consents to the use of the intrusive procedure, or
  - (ii) is not immediately available,

the service provider may use or permit the use of the intrusive procedure in respect of the child, in accordance with the conditions and limitations set out in the Minister's approval, during a period not exceeding seventy-two hours, without the approval of the review team, despite clause (3) (c).

(7) Where a service provider uses or permits the use of an intrusive procedure under subsection (6), the service provider shall seek the review team's approval as soon as possible, and in any event within seventy-two hours of the first use of the intrusive procedure, and shall not continue its use or permit its continued use in respect of the child unless the review team approves it.

Idem

#### PSYCHOTROPIC DRUGS

**126.**—(1) A service provider shall not administer or permit the administration of a psychotropic drug to a child in the service provider's care without,

Consents  
required  
for use of  
psychotropic  
drug

- (a) if the child is sixteen years of age or more, the child's consent; or

- (b) if the child is less than sixteen years of age, the consent of the child's parent or, where the child is in a society's lawful custody, the society's consent.

Idem

(2) A consent referred to in subsection (1) shall identify the psychotropic drug clearly and shall specify,

- (a) what condition the psychotropic drug is intended to alleviate;
- (b) the range of intended dosages;
- (c) any risks and possible side effects associated with the psychotropic drug, and how they vary with different dosages; and
- (d) the frequency with which and the period of time during which the psychotropic drug is to be administered.

Child's views  
and  
preferences

(3) A service provider shall not administer or permit the administration of a psychotropic drug to a child in the service provider's care who is less than sixteen years of age or lacks capacity within the meaning of section 4 without first considering the child's views and preferences, where they can be reasonably ascertained, except under subsection (4).

Emergency

(4) Where,

- (a) a service provider believes on reasonable grounds that,
  - (i) delay in the administration of a psychotropic drug to a child in the service provider's care would cause the child or another person serious mental or physical harm, and
  - (ii) no less restrictive course of action would prevent the harm;
- (b) if the child is sixteen years of age or more, the child apparently does not have capacity; and
- (c) if the child is less than sixteen years of age, the child's parent or, where the child is in a society's lawful custody, the society, is not immediately available,

the service provider may administer or permit the administration of the psychotropic drug to the child during a period not



exceeding seventy-two hours without the consent referred to in subsection (1).

(5) Where a service provider administers or permits the administration of a psychotropic drug under subsection (4), the service provider shall seek the consent referred to in subsection (1) as soon as possible, and in any event within seventy-two hours of the first administration of the psychotropic drug, and shall not continue its administration or permit its continued administration to the child unless the consent is given. Idem

#### ADDITIONAL DUTY OF REVIEW TEAMS

**127.**—(1) Where it is recommended that a child in the care of or regularly receiving services from a service provider who has established a review team undergo, Review of certain recommended procedures

- (a) non-therapeutic medical or chemical experimentation;
- (b) psychosurgery;
- (c) non-therapeutic sterilization; or
- (d) electro-convulsive therapy,

three members of the review team shall review the matter and advise the child's parent or, where the child is in a society's lawful custody, the society, and the service provider of the review team's opinion as to the appropriateness of the recommendation.

(2) One of the members of the review team acting under subsection (1) shall be a legally qualified medical practitioner. Panel to include medical practitioner

(3) No procedure referred to in subsection (1) shall be carried out in premises where an approved service or a service purchased by an approved agency is provided. Prohibition

#### PROFESSIONAL ADVISORY BOARD

**128.**—(1) The Minister may establish a Professional Advisory Board, composed of physicians and other professionals who, Professional Advisory Board

- (a) have special knowledge in the use of intrusive procedures and psychotropic drugs;



(b) have demonstrated an informed concern for the welfare and interests of children; and

(c) are not employed by the Ministry.

Chairman

(2) The Minister shall appoint one of the members of the Professional Advisory Board as its chairman.

Duties  
of  
Board

(3) The Professional Advisory Board shall, at the Minister's request,

(a) advise the Minister on,

(i) prescribing procedures as intrusive procedures, and

(ii) making, amending, suspending and revoking approvals under section 124;

(b) investigate and review the use of intrusive procedures and psychotropic drugs and make recommendations to the Minister; and

(c) review the practices and procedures of service providers with respect to,

(i) secure isolation,

(ii) intrusive procedures, and

(iii) psychotropic drugs,

and make recommendations to the Minister.

Request  
for  
review

**129.** Any person may request that the Minister refer the matter of the use of secure isolation or an intrusive procedure in respect of a child, or the administration of a psychotropic drug to a child, to the Professional Advisory Board for investigation and review.

## PART VII

## ADOPTION

**130.—(1)** In this Part,

Interpretation

- (a) “birth parent”, when used in reference to a child, means a person who is the child’s parent at the time of the child’s birth;
- (b) “licensee” means the holder of a licence issued under Part IX (Licensing) to place children for adoption;
- (c) “relative”, when used in reference to a child, means the child’s grandparent, great-uncle, great-aunt, uncle or aunt, whether by blood, marriage or adoption;
- (d) “spouse” has the same meaning as in Parts I and II of the *Human Rights Code, 1981*.

1981, c. 53

(2) Where a person is directed in this Part to make an order or determination in the best interests of a child, the person shall take into consideration those of the following circumstances of the case that he or she considers relevant:

Best  
interests  
of child

1. The child’s physical, mental and emotional needs, and the appropriate care or treatment to meet those needs.
2. The child’s physical, mental and emotional level of development.
3. The child’s cultural background.
4. The religious faith, if any, in which the child is being raised.
5. The importance for the child’s development of a positive relationship with a parent and a secure place as a member of a family.
6. The child’s relationships by blood or through an adoption order.
7. The importance of continuity in the child’s care and the possible effect on the child of disruption of that continuity.

8. The child's views and wishes, if they can be reasonably ascertained.
9. The effects on the child of delay in the disposition of the case.
10. Any other relevant circumstance.

Where child  
an Indian or  
native person

(3) Where a person is directed in this Part to make an order or determination in the best interests of a child and the child is an Indian or native person, the person shall take into consideration the importance, in recognition of the uniqueness of Indian and native culture, heritage and traditions, of preserving the child's cultural identity.

#### CONSENT TO ADOPTION

Interpretation

**131.**—(1) In this section, "parent", when used in reference to a child, means each of,

- (a) the child's mother;
- (b) an individual described in one of paragraphs 1 to 6 of subsection 8 (1) of the *Children's Law Reform Act*, unless it is proved on a balance of probabilities that he is not the child's natural father;
- (c) the individual having lawful custody of the child;
- (d) an individual who, during the twelve months before the child is placed for adoption under this Part, has demonstrated a settled intention to treat the child as a child of his or her family, or has acknowledged parentage of the child and provided for the child's support;
- (e) an individual who, under a written agreement or a court order, is required to provide for the child, has custody of the child or has a right of access to the child; and
- (f) an individual who has acknowledged parentage of the child in writing under section 12 of the *Children's Law Reform Act*,

R.S.O.1980,  
c. 68

R.S.O.1980,  
c. 68

but does not include a licensee or a foster parent.

Consent  
of parent,  
etc.

(2) An order for the adoption of a child who is less than sixteen years of age, or is sixteen years of age or more but has

not withdrawn from parental control, shall not be made without,

- (a) the written consent of every parent; or
- (b) where the child has been made a Crown ward under Part III (Child Protection), the written consent of a Director.

(3) A consent under clause (2) (a) shall not be given before <sup>Idem</sup> the child is seven days old.

(4) Where a child is being placed for adoption by a society <sup>Idem</sup> or licensee, a consent under clause (2) (a) shall not be given until,

- (a) the society or licensee has advised the parent of his or her right,
  - (i) to withdraw the consent under subsection (8),
  - (ii) to be informed, on his or her request, whether an adoption order has been made in respect of the child, and
  - (iii) to participate in the voluntary disclosure register under section 158; and
- (b) the society or licensee has given the parent an opportunity to seek counselling and independent legal advice with respect to the consent.

(5) Where,

<sup>Custody  
of child</sup>

- (a) a child is being placed for adoption by a society or licensee;
- (b) every consent required under subsection (2) has been given and has not been withdrawn under subsection (8); and
- (c) the twenty-one day period referred to in subsection (8) has expired,

the rights and responsibilities of the child's parents with respect to the child's custody, care and control are transferred to the society or licensee, until the consent is withdrawn under subsection 133 (1) (late withdrawal with leave of court) or an order is made for the child's adoption under section 140.

Consent of  
person to  
be adopted

(6) An order for the adoption of a person who is seven years of age or more shall not be made without the person's written consent.

Idem

(7) A consent under subsection (6) shall not be given until the person has had an opportunity to obtain counselling and independent legal advice with respect to the consent.

Withdrawal  
of consent

(8) A person who gives a consent under subsection (2) or (6) may withdraw it in writing within twenty-one days after the consent is given and where that person had custody of the child immediately before giving the consent, the child shall be returned to him or her as soon as the consent is withdrawn.

Dispensing  
with  
person's  
consent

(9) The court may dispense with a person's consent required under subsection (6) where the court is satisfied that,

- (a) obtaining the consent would cause the person emotional harm; or
- (b) the person is not able to consent because of a developmental handicap.

Consent of  
applicant's  
spouse

(10) An adoption order shall not be made on the application of a person who is a spouse without the written consent of the other spouse.

Consents by  
minors:  
role of  
Official  
Guardian

(11) Where a person who gives a consent under clause (2) (a) is less than eighteen years of age, the consent is not valid unless the Official Guardian is satisfied that the consent is fully informed and reflects the person's true wishes.

Affidavits  
of  
execution

(12) An affidavit of execution in the prescribed form shall be attached to a consent and a withdrawal of a consent under this section.

Form of  
foreign  
consents

(13) A consent required under this section that is given outside Ontario and whose form does not comply with the requirements of subsection (12) and the regulations is not invalid for that reason alone, if its form complies with the laws of the jurisdiction where it is given.

Dispensing  
with  
consent

**132.** The court may dispense with a consent required under section 131 for the adoption of a child, except the consent of the child or of a Director, where the court is satisfied that,

- (a) it is in the child's best interests to do so; and



- (b) the person whose consent is required has received notice of the proposed adoption and of the application to dispense with consent, or a reasonable effort to give the notice has been made.

**133.**—(1) The court may permit a person who gave a consent to the adoption of a child under section 131 to withdraw the consent after the twenty-one day period referred to in subsection 131 (8) where the court is satisfied that it is in the child's best interests to do so, and where that person had custody of the child immediately before giving the consent, the child shall be returned to him or her as soon as the consent is withdrawn.

Late  
withdrawal  
of consent

- (2) Subsection (1) does not apply where the child has been placed with a person for adoption and remains in that person's care.

Exception:  
child  
placed for  
adoption

#### PLACEMENT FOR ADOPTION

**134.**—(1) A society shall make all reasonable efforts to secure the adoption of,

Duty of  
society

- (a) every child who has been made a Crown ward under Part III (Child Protection) and is in the society's care and custody; and
- (b) at the request of a Director or of another society, any child who has been made a Crown ward and is in that society's care and custody.

- (2) No society shall place a child for adoption until,

When  
society  
may place  
child for  
adoption

- (a) any outstanding order of access to the child made under subsection 54 (1) of Part III has been terminated;
- (b) where the child is a Crown ward, the time for commencing an appeal of the order of Crown wardship or of an order under subsection 61 (1) of Part III (status review) has expired; or
- (c) where the child is a Crown ward, any appeal of an order referred to in clause (b) has been finally disposed of or abandoned,

whichever is the latest.

- (3) Where a child to be placed for adoption is an Indian or a native person, the society shall give the child's band or

Where child  
an Indian or  
native person

native community thirty days written notice of its intention to place the child for adoption.

Only  
societies,  
and licensees  
may place  
children, etc.

**135.**—(1) No person except a society or licensee shall,

- (a) place a child with another person for adoption; or
- (b) take, send or attempt to take or send a child who is a resident of Ontario out of Ontario to be placed for adoption.

Only  
societies,  
etc.,  
may bring  
children  
into Ontario

(2) No person except a society or a licensee whose licence contains a term permitting the licensee to act under this subsection shall bring a child who is not a resident of Ontario into Ontario to be placed for adoption.

Licensee  
to notify  
Director of  
placement

(3) No licensee except a licensee exempted under subsection (5) shall,

- (a) place a child with another person for adoption; or
- (b) take, send or attempt to take or send a child who is a resident of Ontario out of Ontario to be placed for adoption,

without first notifying a Director of the proposed placement.

Director's  
approval  
required

(4) No person shall receive a child for adoption, except from a society or from a licensee exempted under subsection (5), without first receiving a Director's approval of the placement under clause 136 (2) (a).

Designation  
of licensee

(5) A Director may designate a licensee that is an agency as exempt from the requirements of subsections (3) and (4).

Placements  
to be  
registered

(6) A society or licensee who places a child with another person for adoption shall register the placement in the prescribed manner within thirty days of placing the child.

Idem:  
Director

(7) A Director who becomes aware of any placement for adoption of a child that has not been registered under subsection (6) shall forthwith register the placement in the prescribed manner.

Exception:  
family  
adoptions

(8) Subsections (1), (2), (3), (4), (6) and (7) do not apply to,

- (a) the placement for adoption of a child with the child's relative, the child's parent or a spouse of the child's parent; or

- (b) the taking or sending of a child out of Ontario for adoption by the child's relative, the child's parent or a spouse of the child's parent.

**136.**—(1) A licensee who notifies a Director of a proposed placement under subsection 135 (3) shall at the same time provide the Director with a report of an adoption homestudy of the person with whom placement is proposed, prepared by a person who, in the opinion of the Director or a local director, is qualified to make an adoption homestudy.

Adoption  
homestudy

(2) A Director who receives a report under subsection (1) shall consider it and, as soon as possible,

Director's  
approval

- (a) approve the proposed placement; or

- (b) refuse to approve the placement and give notice of the refusal to the licensee and the person with whom placement is proposed.

(3) Where a Director gives notice under clause (2) (b), the licensee and the person with whom placement is proposed are entitled to a hearing before the Board and sections 180, 182, 184 and 185 of Part IX (Licensing) apply with necessary modifications.

Right to  
hearing

(4) A Director shall not approve the proposed placement of a child outside Canada unless the Director is satisfied that a prescribed special circumstance justifies the placement.

Placement  
outside  
Canada

(5) A Director may approve a proposed placement under clause (2) (a) subject to any terms and conditions that the Director considers appropriate, including supervision of the placement by,

Terms and  
conditions

- (a) a specified society, licensee or person; or

- (b) in the case of a placement outside Ontario, a specified child protection agency recognized in the jurisdiction of the placement.

(6) Where a Director imposes a term or condition on an approval under subsection (5), the licensee and the person with whom placement is proposed are entitled to a hearing before the Board and sections 181, 182, 184 and 185 of Part IX (Licensing) apply with necessary modifications.

Right to  
hearing

**137.**—(1) Where a child is placed for adoption by a society or licensee, every order respecting access to the child

Access  
orders  
terminate

is terminated, except an order made under Part III (Child Protection).

No interference, etc., with child in placement

(2) Where a child has been placed for adoption by a society or licensee and no adoption order has been made, no person shall,

- (a) interfere with the child; or
- (b) for the purpose of interfering with the child, visit or communicate with the child or with the person with whom the child has been placed.

#### DIRECTOR'S REVIEW

Review by Director

**138.**—(1) Where,

- (a) a society makes a decision refusing to place a child with a person, including a foster parent who is caring for the child, for adoption; or
- (b) a society or licensee makes a decision to remove a child who has been placed with a person for adoption,

a Director may review the decision of the society or licensee and may,

- (c) confirm the decision, giving written reasons for doing so; or
- (d) rescind the decision and do anything further that the society or licensee may do under this Part with respect to the child's placement.

Idem

(2) A Director who reviews a decision under subsection (1) shall take into account the importance of continuity in the child's care.

Notice to Director

**139.**—(1) Where a child has been placed for adoption under this Part, no order for the child's adoption has been made and,

- (a) the person with whom the child is placed asks the society or licensee that placed the child to remove the child; or
- (b) the society or licensee proposes to remove the child from the person with whom the child was placed,



the society or licensee shall notify a Director.

(2) Where no order for a child's adoption has been made <sup>Idem</sup> and a year has expired since,

- (a) the earlier of the child's placement for adoption or the giving of the most recent consent under clause 131 (2) (a); or
- (b) the most recent review under subsection (3),

whichever is later, the society or licensee shall notify a Director, unless the child is a Crown ward.

(3) A Director who receives notice under subsection (1) or (2) shall review the child's status and may, in the child's best interests, <sup>Director's review</sup>

- (a) where the child is in the care of the person with whom the child was placed for adoption, confirm the child's placement or do anything the society or licensee that placed the child may do with respect to the child's placement or further placement;
- (b) where the child was placed for adoption by a licensee, direct the licensee to place the child in the care and custody of a specified society;
- (c) where the child is in the care, custody and control of a society, direct the society to bring the child before the court under Part III to determine whether the child is in need of protection;
- (d) where the child leaves or is removed from the care of the person with whom the child was placed for adoption, do anything the society or licensee that placed the child may do with respect to the child's further placement; or
- (e) where a parent who gave consent under clause 131 (2) (a) and had charge of the child at the time the consent was given agrees to resume the child's care and custody, direct the society or licensee that placed the child to return the child to the parent.

(4) Where a Director directs a society or licensee to return a child to a parent under clause (3) (e), the parent's consent under clause 131 (2) (a) shall be deemed to be withdrawn. <sup>Deemed withdrawal of consent</sup>



## ADOPTION ORDERS

Adoption  
of child

**140.**—(1) The court may make an order for the adoption of a child who is less than sixteen years of age, or is sixteen years of age or more but has not withdrawn from parental control, and,

- (a) has been placed for adoption by a society or licensee;
- (b) was placed for adoption before the 15th day of June, 1979; or
- (c) has been placed for adoption by a person other than a society or licensee and has resided with the applicant for at least two years,

in the child's best interests, on the application of the person with whom the child is placed.

Family  
adoption

(2) The court may make an order for the adoption of a child, in the child's best interests, on the application of,

- (a) a relative of the child;
- (b) the child's parent; or
- (c) the spouse of the child's parent.

Adoption  
of adult,  
etc.

(3) The court may make an order for the adoption of,

- (a) a person eighteen years of age or more; or
- (b) a child who is sixteen years of age or more and has withdrawn from parental control,

on another person's application.

Who may  
apply

(4) An application under this section may only be made,

- (a) by one individual; or
- (b) jointly, by two individuals who are spouses of one another.

Residency  
requirement

(5) The court shall not make an order under this section for the adoption of, or on the application of, a person who is not a resident of Ontario.

**141.** The court shall not make an order under section 140 on the application of a person who is less than eighteen years of age unless the court is satisfied that special circumstances justify making the order.

Where  
applicant  
a minor

**142.** Where the court has made an order,

Where  
order not  
to be made

- (a) dispensing with a consent under section 132; or
- (b) refusing to permit the late withdrawal of a consent under subsection 133 (1),

the court shall not make an order under section 140 until,

- (c) the time for commencing an appeal of the order has expired; or
- (d) any appeal of the order has been finally disposed of or abandoned,

whichever is later.

**143.—**(1) Where an application is made for an order for the adoption of a child under subsection 140 (1), a Director shall, before the hearing, file a written statement with the court indicating,

Director's  
statement

- (a) that the child has resided with the applicant for at least six months or, in the case of an application under clause 140 (1) (c), for at least two years and, in the Director's opinion, it would be in the child's best interests to make the order;
- (b) in the case of an application under clause 140 (1) (a), that for specified reasons it would be in the child's best interests, in the Director's opinion, to make the order although the child has resided with the applicant for less than six months; or
- (c) that the child has resided with the applicant for at least six months or, in the case of an application under clause 140 (1) (c), for at least two years and, in the Director's opinion, it would not be in the child's best interests to make the order,

and referring to any additional circumstances that the Director wishes to bring to the court's attention.

Local director may make statement

(2) Where a child was placed by a society and has resided with the applicant for at least six months, the statement under subsection (1) may be made and filed by the local director.

Amendment of statement, etc.

(3) The Director or local director, as the case may be, may amend the statement referred to in subsection (1) at any time and may attend at the hearing and make submissions.

Where recommendation negative

(4) Where the statement under subsection (1) indicates that, in the Director's or local director's opinion, it would not be in the child's best interests to make the order, a copy of the statement shall be filed with the court and served on the applicant at least thirty days before the hearing.

Report of child's adjustment

(5) The statement under subsection (1) shall be based on a report of the child's adjustment in the applicant's home, prepared by,

(a) the society that placed the child or has jurisdiction where the child is placed; or

(b) a person approved by the Director or local director.

Family adoptions: court may require statement

(6) Where an application is made for an order for the adoption of a child under subsection 140 (2), the court may order that subsections (1), (3), (4) and (5) shall apply to the application.

Place of hearing

**144.**—(1) An application for an adoption order shall be heard and dealt with in the county or district in which,

(a) the applicant; or

(b) the person to be adopted,

resides at the time the application is filed.

Transfer of proceeding

(2) Where the court is satisfied at any stage of an application for an adoption order that there is a preponderance of convenience in favour of conducting it in another county or district, the court may order that it be transferred to that other county or district and be continued as if it had been commenced there.

Hearing in private

**145.**—(1) An application for an adoption order shall be heard and dealt with in the absence of the public.

Court files private

(2) No person shall have access to the court file concerning an application for an adoption order, except,

- (a) the court and authorized court employees;
- (b) the parties and their solicitors and agents; and
- (c) a Director and a local director.

(3) Where an application for an adoption order is not heard within twelve months of the day on which the applicant signed it, Stale applications

- (a) the court shall not hear the application unless the court is satisfied that it is just to do so; and
- (b) the applicant may make another application.

- (4) No person, No right to notice
- (a) who has given a consent under clause 131 (2) (a) and has not withdrawn it;
  - (b) whose consent has been dispensed with under section 132; or
  - (c) who is a parent of a Crown ward who is placed for adoption,

is entitled to receive notice of an application under section 140.

**146.**—(1) The court may, on its own initiative, summon a person to attend before it, testify and produce any document or thing, and may enforce obedience to the summons as if it had been issued under the *Family Law Reform Act*. Power of court

R.S.O.1980,  
c. 152

(2) The court shall not make an order for the adoption of a child under subsection 140 (1) or (2) unless the court is satisfied that, Duty of court

- (a) every person who has given a consent under section 131 understands the nature and effect of the adoption order; and
- (b) every applicant understands and appreciates the special role of an adopting parent.

(3) Where an application is made for an order for the adoption of a child under subsection 140 (1) or (2), the court shall, Participation of child

- (a) inquire into the child's capacity to understand and appreciate the nature of the application; and

- (b) consider the child's views and wishes, if they can be reasonably ascertained,

and where it is practical to do so shall hear the child.

Participation  
of adult, etc.

(4) Where an application is made for an order for the adoption of a person under subsection 140 (3), the court shall consider the person's views and wishes and, on request, hear the person.

Change of  
name

**147.**—(1) Where the court makes an order under section 140, the court may, at the request of the applicant or applicants and, where the person adopted is twelve years of age or more, with the person's written consent,

- (a) change the person's surname to a surname that the person could have been given if he or she had been born to the applicant or applicants; and
- (b) change the person's given name.

When child's  
consent not  
required

(2) A child's consent to a change of name under subsection (1) is not required where the child's consent was dispensed with under subsection 131 (9).

#### INTERIM ORDERS

Interim  
order

**148.**—(1) Where an application is made for an order for the adoption of a child under subsection 140 (1) or (2), the court, after considering the statement made under subsection 143 (1), may postpone the determination of the matter and make an interim order in the child's best interests placing the child in the applicant's care and custody for a specified period not exceeding one year.

Terms  
and  
conditions

(2) The court may make an order under subsection (1) subject to any terms and conditions that the court considers appropriate respecting,

- (a) the child's maintenance and education;
- (b) supervision of the child; and
- (c) any other matter the court considers advisable in the child's best interests.

Not an  
adoption  
order

(3) An order under subsection (1) is not an adoption order.



(4) Sections 131 and 132 (consents to adoption) apply to an order under subsection (1) with necessary modifications.

Consents  
required

(5) Where an applicant takes up residence outside Ontario after obtaining an order under subsection (1), the court may nevertheless make an adoption order under subsection 140 (1) or (2) where the statement made under subsection 143 (1) indicates that, in the Director's or local director's opinion, it would be in the child's best interests to make the order.

Departure  
from  
Ontario

**149.** An adoption order under subsection 140 (1) or (2) or an interim custody order under subsection 148 (1) may be made in respect of a person who is the subject of an earlier adoption order.

Successive  
adoption  
orders

#### APPEALS

**150.—**(1) An appeal from a court's order under section 140 may be made to the District Court by,

Appeal:  
adoption  
order

(a) the applicant for the adoption order; and

(b) the Director or local director who made the statement under subsection 143 (1).

(2) An appeal from a court's order under section 132 dispensing with a consent may be made to the District Court by,

Idem:  
dispensing  
with consent

(a) the persons referred to in subsection (1); and

(b) the person whose consent was dispensed with.

(3) An appeal from a court's order under subsection 133 (1) permitting the late withdrawal of a consent may be made to the District Court by,

Idem:  
late  
withdrawal  
of consent

(a) the persons referred to in subsection (1); and

(b) the person who gave the consent.

(4) No extension of the time for an appeal shall be granted.

No  
extension  
of time  
for appeal

(5) An appeal under this section shall be heard in the county or district in which the order appealed from was made.

Place of  
hearing

(6) An appeal under this section shall be heard in the absence of the public.

Hearing  
in private

## EFFECT OF ADOPTION ORDER

Order  
final

**151.** An adoption order under section 140 is final and irrevocable, subject only to section 150 (appeals), and shall not be questioned or reviewed in any court by way of injunction, declaratory judgment, *certiorari*, *mandamus*, prohibition, *habeas corpus* or application for judicial review.

Interpretation

**152.—**(1) In this section, “adopted child” means a person who was adopted in Ontario.

Status  
of adopted  
child

(2) For all purposes of law, as of the date of the making of an adoption order,

- (a) the adopted child becomes the child of the adopting parent and the adopting parent becomes the parent of the adopted child; and
- (b) the adopted child ceases to be the child of the person who was his or her parent before the adoption order was made and that person ceases to be the parent of the adopted child, except where the person is the spouse of the adopting parent,

as if the adopted child had been born to the adopting parent.

How  
relationships  
determined

(3) The relationship to one another of all persons, including the adopted child, the adopting parent, the kindred of the adopting parent, the parent before the adoption order was made and the kindred of that former parent shall for all purposes be determined in accordance with subsection (2).

Reference  
in will or  
other  
document

(4) In any will or other document made at any time before or after the day this section comes into force, and whether the maker of the will or document is alive on that day or not, a reference to a person or group or class of persons described in terms of relationship by blood or marriage to another person shall be deemed to refer to or include, as the case may be, a person who comes within the description as a result of an adoption, unless the contrary is expressed.

Application  
of section

(5) This section applies and shall be deemed always to have applied with respect to any adoption made under any Act heretofore in force, but not so as to affect,

- (a) any interest in property or right of the adopted child that has indefeasibly vested before the date of the making of an adoption order; and

- (b) any interest in property or right that has indefeasibly vested before the day this section or a predecessor of this section comes into force.

(6) Subsections (2) and (3) do not apply for the purposes of the laws relating to incest and the prohibited degrees of marriage to remove a person from a relationship that would have existed but for those subsections. Exception

**153.** An adoption effected according to the law of another jurisdiction, before or after the day this section comes into force, has the same effect in Ontario as an adoption under this Part. Effect of foreign adoption

**154.** Where an order for the adoption of a child has been made under this Part no court shall make an order under this Part for access to the child by, No order for access by birth parent, etc.

- (a) a birth parent; or
- (b) a member of a birth parent's family.

#### RECORDS, CONFIDENTIALITY AND DISCLOSURE

**155.** At the request of a person who gave a consent to adoption under clause 131 (2) (a) or whose consent required under that clause was dispensed with under section 132, any society or the licensee that placed the child for adoption shall inform the person whether an order has been made for the child's adoption. Parent to be informed on request

**156.**—(1) In this section, “court” includes the District Court. Interpretation

(2) Subject to subsections (3) and 158 (7), the documents used upon an application for an adoption order under this Part or a predecessor of this Part shall be sealed up together with a certified copy of the original order and filed in the office of the court by the proper officer of the court and shall not be open for inspection except upon an order of the court or the written direction of a Director. Papers to be sealed up

(3) Within thirty days after the making of an adoption order under this Part, the proper officer of the court shall cause to be made a sufficient number of certified copies thereof under the seal of the proper certifying authority and shall transmit, Transmission of order

- (a) the original order to the adopting parent;

- (b) one certified copy to a Director;
- (c) one certified copy to the Registrar General, or, where the adopted child was born outside Ontario, two certified copies to the Registrar General; and
- (d) where the adopted child is a member of a band, one certified copy to the Registrar under the *Indian Act* (Canada).

R.S.C. 1970,  
c. I-6

Adoption  
information  
confidential

**157.**—(1) Despite the provision of any other Act, no person shall inspect, remove, alter or permit the inspection, removal or alteration of information that relates to an adoption and is kept,

- (a) by the Ministry;
- (b) by a society or licensee; or
- (c) in the register maintained under section 158,

or disclose or permit the disclosure of such information that the person obtained from the records of the Ministry, the records of a society or licensee, or the register maintained under section 158.

Exceptions

(2) Subsection (1) does not apply to,

- (a) the inspection or disclosure of information in accordance with section 158;
- (b) the inspection by or disclosure to the Minister, a Director or an employee of the Ministry who has a Director's written authority, of information kept by the Ministry or a society or licensee;
- (c) the inspection by or disclosure to an employee of a society or licensee, of information kept by the society or licensee;
- (d) the disclosure of information of a prescribed class to a person whose access to the information, in a Director's opinion, is necessary to protect any person's health; or
- (e) the release by a Director of a copy of an adoption order to,
  - (i) the adopting parent, or



- (ii) a governmental authority that requires the copy to issue a birth certificate, passport or visa.

## VOLUNTARY DISCLOSURE REGISTER

**158.—**(1) In this section,

Interpretation

- (a) “adopted child” means a person who was adopted in Ontario;
- (b) “Director” means the person appointed under subsection (2);
- (c) “register” means the register maintained under subsection (3).

(2) The Minister may appoint an employee of the Ministry as Director for the purposes of this section. Director

(3) The Director shall maintain a register for the purposes of this section. Voluntary disclosure register

(4) An adopted child who has attained the age of eighteen years and a birth parent of an adopted child may each apply to a society or to the Director to be named in the register. Who may apply to be named in register

(5) A society that receives an application under subsection (4) shall forthwith send the application to the Director. Society to notify Director

(6) Upon receiving an application made under subsection (4), the Director shall, Duty of Director

- (a) enter the applicant’s name in the register; and
- (b) determine,
  - (i) where the applicant is an adopted child, whether a birth parent of the applicant is named in the register, or
  - (ii) where the applicant is a birth parent of an adopted child, whether the adopted child is named in the register.

(7) Where the Director,

Idem

- (a) determines, subject to subsection (10), that an applicant’s birth parent or an adopted child whose



birth parent is the applicant, as the case may be, is named in the register; and

- (b) obtains, subject to subsections (8), (9) and (10),
  - (i) the written consent of every person who became the adopted child's parent by an adoption order, and
  - (ii) written confirmation of the consent of the applicant and the birth parent or adopted child, as the case may be,

to the disclosure of information under this section,

the Director shall obtain from the court copies of the documents referred to in subsection 156 (2) and promptly,

- (c) forward the information in those documents and in the register that relates to the adoption to a society that the Director considers appropriate; or
- (d) make the information in those documents and in the register that relates to the adoption available, with counselling, to the adopted child and to the birth parent, if living.

Where  
adopting  
parent's  
consent not  
required

(8) The consent of an adopting parent referred to in subclause (7) (b) (i) is not required where,

- (a) the adopting parent is deceased;
- (b) the adopting parent has been declared a mentally incompetent person under the *Mental Incompetency Act*; or
- (c) after the adopted child's adoption by the adopting parent, the child was made a Crown ward under Part III (Child Protection) and the court did not make an order for access by the adopting parent.

R.S.O.1980,  
c. 264


Where birth  
parent  
mentally  
incompetent

(9) Where the birth parent has been declared a mentally incompetent person under the *Mental Incompetency Act*, the consent of the birth parent's committee shall be deemed to be the confirmation of the birth parent's consent referred to in subclause (7) (b) (ii).



Disclosure  
where birth  
parent or  
adopted child  
deceased

(10) Where the Director determines that the applicant's birth parent or the adopted child whose birth parent is the applicant, as the case may be, is deceased, the Director may

release information under clause (7) (c) or (d) although the conditions set out in clause (7) (a) and subclause (7) (b) (ii) are not satisfied. 

(11) A society that receives information under subsection (7) shall promptly make it available, with counselling, to the adopted child and to the birth parent, if living. Duty of society

(12) A society shall provide guidance and counselling to birth parents and adopted children who are named or may wish to be named in the register. Idem: society

(13) A person may, Information in register confidential

- (a) inspect, remove, alter or permit the inspection, removal or alteration of information kept in the register; or
- (b) disclose or permit the disclosure of information that the person obtained from the register otherwise than under clause (7) (d) or subsection (11),

only with the Director's written authority.

(14) An adopted child and a birth parent who receive information under clause (7) (d) or subsection (11) may disclose it freely. Disclosure by adopted child and birth parent

#### OFFENCES


**159.** No person, whether before or after a child's birth, shall give, receive or agree to give or receive a payment or reward of any kind in connection with, No payments for adoption

- (a) the child's adoption or placement for adoption;
- (b) a consent under section 131 to the child's adoption; or
- (c) negotiations or arrangements with a view to the child's adoption,

except for,

- (d) the prescribed expenses of a licensee, or such greater expenses as are approved by a Director;
- (e) proper legal fees and disbursements; and



- (f) a subsidy paid by an approved agency or by the Minister to an adopting parent or to a person with whom a child is placed for adoption. 

Offence

**160.**—(1) A person who contravenes subsection 135 (1), (2) or (3) (placement for adoption) and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation is guilty of an offence, whether an order is subsequently made for the child's adoption or not, and on conviction is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than two years, or to both.

Idem

(2) A person who contravenes subsection 135 (4) (receiving child) is guilty of an offence and on conviction is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than two years, or to both.

Idem

(3) A person who contravenes subsection 137 (2) (interference with child) is guilty of an offence and on conviction is liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than one year, or to both.

Idem

(4) A person who contravenes section 159 and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation is guilty of an offence and on conviction is liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than three years, or to both.

Limitation  
period

(5) A proceeding under subsection (1), (2) or (4) shall not be commenced after the expiration of two years after the date on which the offence was, or is alleged to have been, committed.

#### INJUNCTION

Injunction

**161.**—(1) The Supreme Court may grant an injunction to restrain a person from contravening subsection 137 (2), on the society's or licensee's application.

Variation,  
etc.

(2) The Supreme Court may vary or terminate an order made under subsection (1), on any person's application.

## PART VIII

## CONFIDENTIALITY OF AND ACCESS TO RECORDS

**162.** In this Part,

Interpretation

- (a) “family”, when used in reference to a person, means,

(i) the person’s parents and children, and

(ii) the person’s spouse within the meaning of Part II of the *Family Law Reform Act*;

R.S.O.1980,  
c. 152

- (b) “record”, when used in reference to a person, means all recorded information, regardless of physical form or characteristics, that,

(i) relates to the person,

(ii) is recorded in connection with the provision of an approved service, or a service purchased by an approved agency, to the person or a member of the person’s family, and

(iii) is under the control of a service provider.

**163.**—(1) This Part does not apply to information recorded before the day this Part comes into force.

Exception:  
information  
in existing  
records

(2) This Part does not apply to a record,

Exception:  
certain kinds  
of records

(a) obtained by means of an order made under subsection 70 (3) of Part III (child abuse investigation);

(b) in the register maintained under subsection 71 (5) of Part III (child abuse register);

(c) that relates to the adoption of a child under Part VII;

(d) in the register maintained under subsection 158 (3) of Part VII (voluntary disclosure register);

(e) that relates to a patient and whose disclosure without the patient’s consent would contravene a regulation made under the *Health Disciplines Act*;

R.S.O.1980,  
c. 196

R.S.O.1980,  
c. 262

- (f) that is a clinical record within the meaning of subsection 29 (1) of the *Mental Health Act*;

R.S.O.1980,  
c. 410

- (g) that is a medical record kept by a hospital that is approved under the *Public Hospitals Act*.

#### DISCLOSURE OF RECORDS

Prohibition

**164.**—(1) No service provider or employee of a service provider shall disclose a person's record to any person, except in accordance with section 165 (disclosure with consent), 166 (disclosure without consent) or 167 (access by subject and parents) or subsection 171 (4) (review by Board).

Exception

(2) Subsection (1) does not prevent the disclosure of a person's record that is,

- (a) required or permitted by,
  - (i) another Act or a regulation made under another Act, or
  - (ii) an order of a court; or
- (b) permitted by the *Young Offenders Act* (Canada).

S.C. 1980-  
81-82-83,  
c. 110

Consent to  
disclosure:  
child under  
sixteen

**165.**—(1) A service provider may disclose the record of a child under the age of sixteen years, with the written consent of the child's parent or, where the child is in a society's lawful custody, the society's written consent.

Exception:  
child's  
counselling  
records

(2) Subsection (1) does not apply to a record created in connection with the provision of counselling services to a child under section 28 of Part II (Voluntary Access to Services), which may be disclosed only with the child's written consent.

Consent to  
disclosure:  
person over  
sixteen

(3) A service provider may disclose the record of a person who is sixteen years of age or older with that person's written consent.

Requirements  
for consent

(4) A consent given under subsection (1), (2) or (3) to the disclosure of a person's record shall specify,

- (a) what information is to be disclosed;
- (b) the purpose of the disclosure;
- (c) to whom the record is to be disclosed;



- (d) whether the consent authorizes the further disclosure of the record by the person referred to in clause (c), and, if so, to whom and for what purposes; and
- (e) the period of time during which the consent remains effective, unless revoked.

(5) The revocation of a consent given under subsection (1), (2) or (3) is effective when it is delivered to the service provider in writing or the service provider otherwise obtains actual notice of it.

When  
revocation  
of consent  
effective

**166.**—(1) A service provider may disclose a person's record without any consent referred to in section 165,

Disclosure  
without  
consent

- (a) to persons who provide approved services as employees or agents of the service provider;
- (b) to a foster parent, if the person is a child who is in the foster parent's care;
- (c) to employees, officers and professional advisors of the service provider who require access to the person's record for the performance of their duties;
- (d) to a society, if the person is a child who is in the society's care under,
  - (i) an order made under Part III (Child Protection), or
  - (ii) a temporary care agreement or special needs agreement made under Part II (Voluntary Access to Services), unless the agreement provides otherwise;
- (e) to a peace officer, if the service provider believes on reasonable grounds that,
  - (i) failure to disclose the person's record is likely to cause the person or another person physical or emotional harm, and
  - (ii) the need for disclosure is urgent;
- (f) to a person who is providing medical treatment to the person whose record is concerned, if the service provider believes on reasonable grounds that,

(i) failure to disclose the record is likely to cause the person whose record is concerned physical or emotional harm, and

(ii) the need for disclosure is urgent; or

(g) to a review team for the purposes of section 69 of Part III (Child Protection).

Idem:  
research

(2) A service provider may, with a Director's written approval obtained in accordance with the regulations, disclose a person's record to a person engaged in research, but that person shall not,

(a) use or communicate information from the record for any purpose except research, academic pursuits or the compilation of statistical data; or

(b) communicate any information that may have the effect of identifying a person whose record is disclosed.

Mandatory  
disclosure

(3) A service provider shall disclose a person's record without any consent referred to in section 165,

(a) to a program supervisor; or

(b) to a Director,

who requests its disclosure.

Prohibition

(4) A program supervisor or Director shall not use or communicate information from a person's record obtained under subsection (3) for any purpose outside the scope of his or her duties.

Notice of  
disclosure  
without  
consent

(5) A service provider who discloses a person's record under clause (1) (e) or (f) shall promptly give written notice of the disclosure to the person whose record was disclosed.

#### ACCESS TO RECORDS

Right of  
access to  
personal  
records

**167.**—(1) Subject to subsection (2) and section 168, a person who is twelve years of age or older has a right to and shall on request be given access to,

(a) his or her own records;

(b) the records of his or her child who is under the age of sixteen years; and

- (c) the records of a child who is in his or her lawful custody or charge and is under the age of sixteen years.

(2) Clauses (1) (b) and (c) do not apply to a record created in connection with the provision of counselling services to a child under section 28 of Part II (Voluntary Access to Services), which may be disclosed to the child's parent only with the child's written consent.

Exception:  
child's  
counselling  
records

(3) Any parent of a child, if the child is under the age of sixteen years, may designate specific information that is contained in the child's record and relates to the parent as information that shall not be disclosed to the child, and the service provider shall not disclose the designated information to the child.

Restriction  
by parent,  
etc.

(4) The consent of a child's parent is not required for the child's access to a record under subsection (1).

Child's  
access to  
own records

**168.**—(1) A service provider may refuse to give a person referred to in subsection 167 (1) access to all or part of his or her record where the person is a child under the age of sixteen years and the service provider is of the opinion that access to all or part of the record would cause the child physical or emotional harm.

Where  
access  
may be  
refused

(2) A service provider may withhold from a person referred to in subsection 167 (1) the name of another person and other information relating to that other person where the service provider is of the opinion that disclosure is likely to result in physical or emotional harm to that other person.

Information  
that may be  
withheld

(3) A service provider may withhold from a person referred to in subsection 167 (1) the name of an individual who has provided information in the person's record but is not engaged in providing services.

Idem:  
informants

(4) A service provider may withhold from a person referred to in subsection 167 (1) the contents of a medical, emotional, developmental, psychological, educational or social assessment performed by a person who is not employed by the service provider, but may not withhold that person's name.

Idem:  
assessments

**169.**—(1) Where a person referred to in subsection 167 (1) requests access to a record, the service provider shall, within thirty days of receiving the request,

Duty of  
service  
provider

- (a) give the person access to the record;

- (b) notify the person that the service provider refuses to give him or her access to part of the record, stating the reasons for the refusal, and give the person access to the rest of the record;
- (c) notify the person that the service provider refuses to give him or her access to the record, stating the reasons for the refusal; or
- (d) notify the person that this Part does not apply to the record or that the record does not exist, if that is the case.

Notice of  
right of  
review

(2) A notice of a refusal of access under clause (1) (b) or (c) shall contain a statement of the person's right to request a review of the matter under subsection 171 (1).

Right to  
have  
record  
corrected

**170.**—(1) A person who has a right to access to a record under subsection 167 (1) also has a right to have errors or omissions in the record corrected.

Duty of  
service  
provider

(2) Where a person referred to in subsection (1) requests that a service provider correct an error or omission in a record, the service provider shall, within thirty days of receiving the request,

- (a) make the correction as requested, and give notice of the correction to every person to whom the service provider has disclosed the record;
- (b) notify the person that the service provider refuses to make the correction as requested, stating the reasons for the refusal, and note the request and response on the record; or
- (c) notify the person that this Part does not apply to the record or that the record does not exist, if that is the case.

Notice of  
right of  
review

(3) A notice of a refusal to make a correction under clause (2) (b) shall contain a statement of the person's right to request a review of the matter under subsection 171 (1).

#### REVIEW

Right to  
review:  
refusal of  
access or  
correction

**171.**—(1) A person referred to in subsection 167 (1) or 170 (1) whose request for access to or correction of a record is refused in whole or in part may, within twenty days of receiving notice of the refusal, request that the Board review the matter.



(2) A person who believes that a service provider may have disclosed his or her record without authority may, within twenty days of becoming aware of the possible unauthorized disclosure, request that the Board review the matter.

Idem:  
unauthorized  
disclosure

(3) Where the Board receives notice of a request for review under subsection (1) or (2), it shall review the matter, following the prescribed procedures, and may do so by holding a hearing.

Duty of  
Board

(4) In conducting a review requested under subsection (1) or (2), the Board may examine the record in question.

Board may  
examine  
record

(5) On completing a review requested under subsection (1), the Board may,

Decision  
of Board

- (a) order the service provider to give the person access to all or part of the record;
- (b) order the service provider to make a correction to the record and give the notice referred to in clause 170 (2) (a); or
- (c) if it is satisfied that the refusal appealed from is justified, confirm the refusal,

and shall provide a copy of its decision to the person who requested the review, the service provider and the Minister.

(6) On completing a review requested under subsection (2), the Board,

Idem

- (a) shall, unless it is satisfied that no disclosure or no unauthorized disclosure of the person's record took place, declare that the disclosure was unauthorized;
- (b) may order the service provider to change its procedures for the maintenance and disclosure of persons' records, or to desist from a particular disclosure practice; and
- (c) where it is satisfied that an unauthorized disclosure took place, may recommend to the Minister that the service provider's approval under Part I (Flexible Services), if any, be revoked or, where the service provider is a licensee, that the licence be revoked under Part IX (Licensing),

and shall provide a copy of its decision to the person who requested the review, the service provider and the Minister.



## GENERAL

Access, etc.,  
to be noted  
on record

**172.**—(1) Every disclosure of all or part of a person's record and every correction to a person's record shall be noted on and forms part of the record.

Exception

(2) Subsection (1) does not apply to routine use of a person's record by a service provider and the service provider's employees or, where the service provider is the Minister, the Minister's employees engaged in providing services.

Protection  
from  
liability  
for  
disclosure

**173.** Where a service provider discloses a person's record in accordance with this Part, no action or other proceeding shall be instituted against the service provider or anyone acting under the service provider's authority,

(a) if this Part requires the disclosure; or

(b) if this Part permits the disclosure and the service provider has reasonable grounds to believe the information contained in the record to be accurate.

Code of  
record-  
keeping  
procedures

**174.**—(1) Every service provider shall establish and follow a written code of procedure for the creation, maintenance and disclosure of persons' records.

Idem

(2) A code of procedure referred to in subsection (1) shall contain,

(a) a description of the types of information that may be recorded and the purposes for which information may be recorded;

(b) a requirement that information, wherever possible, be collected from or confirmed by the person to whom it relates;

(c) a requirement that no more information be recorded than is actually necessary for the provision of the service in question; and

(d) the prescribed provisions.

Retention,  
storage and  
destruction  
schedules

(3) Every service provider shall retain, store and destroy persons' records in accordance with the prescribed schedules.

## PART IX

## LICENSING

**175.** In this Part,

Interpretation

## (a) “children’s residence” means,

(i) a parent model residence where five or more children not of common parentage, or

(ii) a staff model residence where three or more children not of common parentage,

live and receive residential care, and includes a foster home or other home or institution that is supervised or operated by a society, but does not include,

(iii) a house licensed under the *Private Hospitals Act*, R.S.O. 1980, c. 389(iv) a day nursery as defined in the *Day Nurseries Act*, R.S.O. 1980, c. 111(v) a recreational camp under the *Health Protection and Promotion Act, 1983*, 1983, c. 10(vi) a home for special care under the *Homes for Special Care Act*, R.S.O. 1980, c. 202(vii) a school or private school as defined in the *Education Act*, R.S.O. 1980, c. 129

(viii) a hostel intended for short term accommodation,

(ix) a hospital that receives financial aid from the Government of Ontario, or

(x) a group home or similar facility that receives financial assistance from the Minister of Correctional Services but receives no financial assistance from the Minister under this Act;

## (b) “non-profit agency” means a corporation without share capital that has objects of a charitable nature and,

(i) to which Part III of the *Corporations Act* R.S.O. 1980, c. 95 applies, or

- (ii) that is incorporated by or under a general or special Act of the Parliament of Canada;
- (c) “parent model residence” means a building, group of buildings or part of a building where not more than two adult persons live and provide care for children on a continuous basis;
- (d) “staff model residence” means a building, group of buildings or part of a building where adult persons are employed to provide care for children on the basis of scheduled periods of duty.

#### WHERE LICENCE REQUIRED

Licence  
required  
to operate  
children's  
residence,  
etc.

#### **176.—(1) No person shall,**

- (a) establish, operate or maintain a children's residence; or
- (b) provide, directly or indirectly, residential care for three or more children not of common parentage in places that are not children's residences,

except under the authority of a licence issued by a Director under this Part.

Idem:  
placement  
for  
adoption

(2) No person other than a society shall place a child for adoption, except under the authority of a licence issued by a Director under this Part.

Issuing  
licence

(3) Subject to section 178, a person who applies for a licence in accordance with this Part and the regulations and pays the prescribed fee is entitled to be issued a licence by a Director, subject to any terms and conditions imposed by the Director.

Idem

#### (4) Despite subsection (3),

- (a) a licence shall not be issued to a partnership or association of persons; and
- (b) a licence to place a child for adoption shall only be issued to an individual or a non-profit agency.

Renewal  
of licence

(5) Subject to section 179, a licensee who applies for renewal of the licence in accordance with this Part and the regulations and pays the prescribed fee is entitled to have the licence renewed by a Director, subject to any terms and conditions imposed by the Director.

(6) Where an applicant for a licence or renewal of a licence does not meet all the requirements for the issuing or renewal of the licence and requires time to meet them, a Director may, subject to such terms and conditions as the Director may prescribe, issue a provisional licence for the period that the Director considers necessary to give the applicant time to meet the requirements.

Provisional  
licence or  
renewal

(7) A licence is not transferable.

Not  
transferable

(8) No licensee shall place a child in a residential placement except in accordance with this Act and the regulations.

Placements  
must be in  
accord with  
Act and  
regulations

POWERS OF PROGRAM SUPERVISOR

**177.**—(1) For the purpose of ensuring compliance with this Act and the regulations a program supervisor may, at all reasonable times, upon producing proper identification, enter,

Powers of  
program  
supervisor

- (a) the premises of a licensee;
- (b) a children’s residence; or
- (c) a place where a child receives residential care,

and may inspect the facilities, the services provided, the books of account and the records relating to the services, and make copies of those books and records or remove them from the premises to copy them as may be reasonably required.

(2) No person shall hinder, obstruct or attempt to hinder or obstruct a program supervisor in the performance of the program supervisor’s duties or knowingly give false information about the premises or services to a program supervisor.

Offence

(3) No licensee or person in charge of premises referred to in clause (1) (a), (b) or (c) shall refuse to give a program supervisor access to the books and records referred to in subsection (1) or refuse to give a program supervisor information about the premises or services that the program supervisor reasonably requires.

Idem

(4) A program supervisor shall exercise the power of entry set out in subsection (1) in accordance with the regulations.

Regulations  
re exercise  
of power of  
entry

REFUSAL AND REVOCATION

**178.** A Director may refuse to issue a licence where, in the Director’s opinion,

Grounds for  
refusal

- (a) the applicant or an employee of the applicant, or, where the applicant is a corporation, an officer or director of the corporation is not competent to carry on the activity for which the licence is required in a responsible manner in accordance with this Act and the regulations;
- (b) the past conduct of the applicant or an employee of the applicant or, where the applicant is a corporation, of an officer or director of the corporation, affords reasonable grounds for belief that the activity for which the licence is required will not be carried on in a responsible manner in accordance with this Act and the regulations; or
- (c) the premises in which the applicant proposes to establish, operate and maintain a children's residence or to provide residential care, as the case may be, do not comply with the requirements of this Part and the regulations.

Refusal to  
renew;  
revocation

**179.** A Director may refuse to renew or may revoke a licence where, in the Director's opinion,

- (a) the licensee or an employee of the licensee, or where the licensee is a corporation, an officer or director of the corporation has contravened or has knowingly permitted a person under his or her control or direction or associated with him or her to contravene,
  - (i) this Act or the regulations,
  - (ii) another Act, or the regulations made under another Act, that applies to the activity for which the licence is required, or
  - (iii) a term or condition of the licence;
- (b) the premises where the children's residence is located or the residential care is provided do not comply with the requirements of this Part and the regulations;
- (c) the activity for which the licence is required is carried on in a manner that is prejudicial to the children's health, safety or welfare;
- (d) a person has made a false statement in the application for the licence or for its renewal, or in a



report or document required to be furnished by this Act or the regulations, or by another Act or the regulations made under another Act that applies to the activity for which the licence is required; or

- (e) a change has occurred in the employees, officers or directors of the applicant that would, if the applicant were applying for the licence in the first instance, afford grounds under clause 178 (b) for refusing to issue the licence.

#### HEARING BY BOARD

**180.**—(1) Where a Director proposes to refuse to issue a licence under section 178 or to refuse to renew or to revoke a licence under section 179, the Director shall cause notice of the proposal, together with written reasons, to be served on the applicant or licensee.

Notice of  
proposal

(2) A notice under subsection (1) shall inform the applicant or licensee that he or she is entitled to a hearing by the Board if he or she mails or delivers to the Director and to the Board, within ten days after the notice under subsection (1) is served, a written request for a hearing.

Request for  
hearing

(3) Where an applicant or licensee does not require a hearing under subsection (2), the Director may carry out the proposal.

Powers of  
Director  
where no  
hearing  
required

(4) Where an applicant or licensee requires a hearing under subsection (2), the Board shall appoint a time for and hold a hearing and may, on hearing the matter,

Powers of  
Board where  
hearing  
required

(a) order the Director to carry out the proposal; or

(b) order the Director to take such other action as the Board considers appropriate, in accordance with this Part and the regulations,

and the Board may substitute its opinion for that of the Director.

**181.**—(1) A licensee who is dissatisfied with the terms and conditions prescribed by a Director under subsection 176 (3), (5) or (6) is entitled to a hearing by the Board if he or she mails or delivers to the Director and to the Board, within fifteen days after receiving the licence, a written request for a hearing.

Review of  
terms of  
licence by  
Board

Powers of  
Board

(2) Where a licensee requires a hearing under subsection (1), the Board shall appoint a time for and hold a hearing and may, on hearing the matter,

- (a) confirm any or all of the terms and conditions;
- (b) strike out any or all of the terms and conditions; or
- (c) impose such other terms and conditions as the Board considers appropriate.

Receipt of  
licence

(3) For the purposes of subsection (1), a licensee shall be deemed to receive the licence on the tenth day after the day of its mailing, unless the licensee establishes that he or she did not receive it or did not, through absence, accident, illness or another cause beyond his or her control, acting in good faith, receive the licence until a later date.

Extension  
of time for  
requiring  
hearing

**182.**—(1) The Board may extend the time fixed for requiring a hearing under subsection 180 (2) or 181 (1), either before or after its expiration, where,

- (a) it appears to the Board that there are reasonable grounds for granting relief to the applicant or licensee; and
- (b) the Board is satisfied that the applicant or licensee has reasonable grounds to seek an extension,

and the Board may give such directions as it considers proper in connection with the extension.

Continuation  
of licence  
pending  
renewal

(2) Subject to section 183, where a licensee has applied for renewal of the licence and paid the prescribed fee within the prescribed time or, if no time is prescribed, before the licence expires, the licence shall be deemed to continue,

- (a) until the renewal is granted; or
- (b) where the licensee is served with notice that the Director proposes to refuse to grant the renewal, until the time for requiring a hearing has expired and, where a hearing is required, until the Board has made its decision.

Provisional  
suspension  
of licence

**183.**—(1) A Director may, by causing notice to be served on a licensee, provisionally and without a hearing suspend the licence where, in the Director's opinion, the manner in which the children's residence is operated, residential care is provided or children are placed for adoption, as the case may be,

is an immediate threat to the health, safety or welfare of the children.

(2) A notice served under subsection (1) shall contain a statement of the grounds for suspending the licence.

Contents of notice

(3) A provisional suspension takes effect on the date that the licensee receives the notice.

When suspension takes effect

(4) Where a notice is served under subsection (1), subsections 180 (2), (3) and (4) apply with necessary modifications.

s. 180 (2-4) apply

**184.**—(1) The Director, the applicant or licensee who requires the hearing and any other persons that the Board specifies are parties to a proceeding under this Part.

Parties

(2) A member of the Board who has taken part before a hearing in any investigation or consideration of its subject matter, including a review under section 171 of Part VIII (Confidentiality of and Access to Records) that relates to the applicant or licensee, shall not take part in the hearing.

Members with prior involvement

(3) A member of the Board who takes part in a hearing shall not communicate with any person, except another member, a solicitor who is not the solicitor of any party, or an employee of the Board, about the subject matter of the hearing, unless all parties are notified and given an opportunity to participate.

Discussion of subject matter of hearing

(4) The Board may seek independent legal advice about the subject matter of a hearing and, if it does so, shall disclose the nature of the advice to the parties to enable them to respond.

When Board seeks independent legal advice

(5) A party to a proceeding under this Part shall be given an opportunity, before the hearing, to examine any written or documentary evidence that will be produced and any report whose contents will be given in evidence at the hearing.

Examination of documentary evidence

(6) The evidence taken before the Board at a hearing shall be recorded.

Recording of evidence

(7) No member of the Board shall participate in a decision of the Board under this Part unless he or she was present throughout the hearing and heard the evidence and argument of the parties and, unless the parties consent, the Board shall not make a decision under this Part unless all the members who were present at the hearing participate in the decision.

Only members at hearing to participate in decision, etc.

(8) Despite section 21 of the *Statutory Powers Procedure Act*, the Board shall make a final decision and notify the

Final decision of Board within ninety days R.S.O. 1980, c. 484

parties of it within ninety days from the day the Board receives the applicant's or licensee's request for a hearing under subsection 180 (2) or 181 (1).

#### APPEAL

Appeal

**185.**—(1) An appeal lies to the Divisional Court from the Board's decision under this Part.

Record to  
be filed in  
Supreme  
Court

(2) Where notice of an appeal is served under this section, the Board shall forthwith file with the Registrar of the Supreme Court the record of the proceeding in which the decision appealed from was made.

Minister  
entitled to be  
heard

(3) The Minister is entitled to be heard, by counsel or otherwise, on the argument of an appeal under this section.

#### DELIVERY OF LICENCE AND RECORDS

Records and  
licence to  
be handed  
over to  
Minister

**186.**—(1) A licensee whose licence is revoked or who ceases to carry on the activity for which the licence is required shall deliver up to the Minister the licence and all the records in the licensee's possession or control that relate to the children to whom services were being provided.

Removal of  
children

(2) Where a licence to operate a children's residence or to provide residential care is suspended or revoked, the parent of every child in the children's residence or other place where residential care is provided shall arrange for the child's removal from the residence or other place as soon as is practicable, having regard to the child's best interests, and the Minister may assist in finding an alternative placement for the child.

#### OCCUPATION BY MINISTER

Order for  
Minister's  
occupation

**187.**—(1) The Minister may, where a Director's proposal to revoke or not to renew a licence under subsection 180 (1) or notice of provisional suspension under subsection 181 (1) has been served on a licensee who operates a children's residence or provides residential care and the matter has not yet been finally disposed of, apply without notice to the District Court for an order,

- (a) authorizing the Minister to occupy and operate the children's residence or the premises where the residential care is provided, pending the outcome of the proceeding until alternative accommodation may be found for the children who are being cared for; and



- (b) directing the sheriff to assist the Minister as may be necessary in occupying the premises.

(2) The District Court may make an order referred to subsection (1) where it is satisfied that the health, safety or welfare of the children being cared for require it.

Where District Court may make order

(3) Where an order has been made under subsection (2), the Minister may, despite sections 25 and 41 of the *Expropriations Act*, immediately occupy and operate or arrange for the occupation and operation of the premises for a period not exceeding six months.

Interim management R.S.O. 1980, c. 148

#### INJUNCTIONS

**188.**—(1) A Director may apply to the Supreme Court for an order enjoining any person from, Injunction

- (a) contravening subsection 176 (1) (licence requirement); or
- (b) carrying on an activity for which a licence is required while the licence is provisionally suspended under section 183.

(2) Any person may apply to the Supreme Court for an order varying or discharging an order made under subsection (1). Idem

#### OFFENCES

**189.**—(1) Every person who, Offence

- (a) contravenes subsection 176 (1);
- (b) contravenes a term or condition of a licence relating to the maximum number of children to be cared for in a children's residence or other place where residential care is provided under the authority of a licence;
- (c) causes a child to be cared for in a children's residence operated by a person who is not licensed under this Part, or in another place where residential care is provided by a person who is required to be but is not licensed to provide residential care under this Part; or
- (d) is a child's parent or a person under a legal duty to provide for the child and permits the child to be



cared for in a children's residence or other place referred to in clause (c),

and every director, officer or employee of a corporation who authorizes, permits or concurs in such an act by the corporation is guilty of an offence and on conviction is liable to a fine of not more than \$1,000 for each day on which the offence continues or to imprisonment for a term of not more than one year, or to both.

Idem

(2) Every person who,

- (a) knowingly contravenes subsection 177 (2) or (3) (obstructing program supervisor, etc.);
- (b) knowingly furnishes false information in an application under this Part or in a statement, report or return required to be furnished under this Part or the regulations; or
- (c) fails to comply with an order or direction made by a court under this Part,

and every director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention, furnishing or failure by the corporation is guilty of an offence and on conviction is liable to a fine of not more than \$2,000.

#### CHILDREN'S SERVICES REVIEW BOARD

Children's  
Services  
Review  
Board

**190.**—(1) The Children's Services Review Board is continued, composed of the prescribed number of members appointed by the Lieutenant Governor in Council, and has the powers and duties given to it by this Act and the regulations made under this Part.

Chairman  
and vice-  
chairmen

(2) The Lieutenant Governor in Council may appoint a member of the Board as chairman and may appoint one or more other members as vice-chairmen.

Term

(3) A member of the Board shall hold office for the prescribed term.

Quorum

(4) The prescribed number of members of the Board are a quorum.

Remuneration

(5) The chairman and vice-chairmen and the other members of the Board shall be paid the *per diem* allowances determined by the Lieutenant Governor in Council and are entitled to their reasonable and necessary travelling and living expen-

ses while attending meetings or otherwise engaged in the work of the Board.

## PART X

## INDIAN AND NATIVE CHILD AND FAMILY SERVICES

Interpretation **191.** In this Part, “customary care” means the care and supervision of an Indian or native child by a person who is not the child’s parent, according to the custom of the child’s band or native community.

Designation of native communities **192.** The Minister may designate a community, with the consent of its representatives, as a native community for the purposes of this Act.

Agreements with bands and native communities **193.** The Minister may make agreements with bands and native communities, and any other parties whom the bands or native communities choose to involve, for the provision of services.

Designation of child and family service authority **194.—**(1) A band or native community may designate a body as an Indian or native child and family service authority.

Agreements, etc.

(2) Where a band or native community has designated an Indian or native child and family service authority, the Minister,

- (a) shall, at the band’s or native community’s request, enter into negotiations for the provision of services by the child and family service authority;
- (b) may enter into agreements with the child and family service authority and, if the band or native community agrees, any other person, for the provision of services; and
- (c) may designate the child and family service authority, with its consent and if it is an approved agency, as a society under subsection 15 (2) of Part I (Flexible Services).

Subsidy for customary care

**195.** Where a band or native community declares that an Indian or native child is being cared for under customary care, a society or agency may grant a subsidy to the person caring for the child.

Consultation with bands and native communities

**196.** A society or agency that provides services or exercises powers under this Act with respect to Indian or native children shall regularly consult with their bands or native communities about the provision of the services or the exercise of

the powers and about matters affecting the children, including,

- (a) the apprehension of children and the placement of children in residential care;
- (b) the placement of homemakers and the provision of other family support services;
- (c) the preparation of plans for the care of children;
- (d) status reviews under Part III (Child Protection);
- (e) temporary care and special needs agreements under Part II (Voluntary Access to Services);
- (f) adoption placements;
- (g) the establishment of emergency houses; and
- (h) any other matter that is prescribed.

## PART XI

## REGULATIONS

Regulations:  
Part I  
(Flexible  
Services)

**197.**—(1) The Lieutenant Governor in Council may make regulations for the purposes of Part I,

1. prescribing additional powers and duties of Directors and program supervisors;
2. prescribing reports to be made and information to be furnished under subsection 5 (5), their form and the intervals at which they are to be made or furnished;
3. governing the exercise of the power of entry set out in subsection 6 (1);
4. governing the management and operation of approved agencies or any class of them;
5. governing the provision of approved services or any class of them;
6. exempting designated approved agencies or approved services or any class of them from any provision of this Act or the regulations for a specified period or periods;
7. governing the accommodation, facilities and equipment to be provided,
  - i. in buildings in which approved services are provided, and
  - ii. in the course of the provision of approved services;
8. further defining “service”, “child development service”, “child treatment service”, “child welfare service”, “community support service” and “young offenders service”;
9. defining “prevention service”;
10. governing the establishment, management, operation, location, construction, alteration and renovation of buildings, or any class of them, in which approved services are provided;



11. prescribing procedures and conditions of eligibility for the admission of children and other persons to and their discharge from places where approved services are provided;
12. prescribing the qualifications, powers and duties of persons employed in providing approved services or any class of approved services;
13. governing the residential placement of children and prescribing procedures for placements, discharge, assessments and case management;
14. requiring and prescribing medical and other related or ancillary services for the care and treatment of children and other persons in places where services or any class of them are provided;
15. governing applications by agencies for approval under subsections 8 (1) and 9 (1) and establishing criteria for approval;
16. governing applications by approved agencies for payments under this Part, prescribing the method, time, manner, terms and conditions of payments and providing for the suspension and withholding of payments and for the making of deductions from payments;
17. prescribing the manner of computing the amount of financial assistance for the purposes of sections 8 and 9, prescribing classes of payments for the purposes of those sections and determining the amounts of payments;
18. governing the transfer and assignment of the assets of approved agencies acquired with financial assistance from the Province of Ontario, or of any class of such assets, for the purposes of subsection 10 (3), and prescribing classes of such assets;
19. requiring approved agencies to provide the prescribed information to the prescribed persons, and prescribing the information and the persons;
20. prescribing the accounts and records to be kept by approved agencies, the claims, returns and reports to be made and budgets to be submitted to the Minister and the methods, time and manner in which they shall be made or submitted;

21. requiring service providers, or any class of service providers, to keep records, and prescribing the form and content of those records;
22. providing for the recovery, by an approved agency or by the Minister, from the person or persons in whose charge a child is or has been or from the estate of that person or persons of amounts paid by the agency for the child's care and maintenance, and prescribing the circumstances and the manner in which such a recovery may be made;
23. providing for the recovery of payments made to approved agencies under this Part and the regulations;
24. prescribing provisions to be included in the by-laws of approved agencies, or any class of them, for the purpose of subsection 13 (2);
25. prescribing the number of band or native community representatives on the boards of directors of agencies or any class of them, the manner of their appointment and their terms, for the purpose of subsection 13 (3);
26. prescribing forms and providing for their use;
27. prescribing fees or classes of fees that may be charged for services and the terms and conditions under which a fee may be charged;
28. prescribing the number of municipal representatives on the boards of directors of societies or any class of them, the manner of their appointment and their terms, for the purpose of section 18;
29. providing for an executive committee of the board of directors of a society, its composition, quorum, powers and duties;
30. prescribing a system for determining,
  - i. the amounts of payments under subsections 19 (2) and (3) (payments by Minister and municipalities),
  - ii. a society's estimated expenditures, and

iii. the part of a society's estimated expenditures that is referable to a municipality;

31. providing for payments by the Minister to reimburse a municipality for all or any part of an increase in its financial obligations to a society under this Part and prescribing classes of such payments and the terms and conditions under which such a payment or class of payments may be made;
32. governing the construction, alteration, renovation, extension, furnishing and equipping of homes operated or supervised by societies, other than children's residences as defined in Part IX (Licensing), where residential care is provided to children.

(2) A regulation made under paragraph 18, 24, 25 or 28 of subsection (1) (transfer of assets, prescribed provisions in agency by-laws, band or native community representatives, municipal representatives) may be general or specific in its application. Idem

(3) A regulation made under paragraph 17, 30 or 31 of subsection (1) (financial assistance for the purposes of sections 8 and 9, amounts of payments to societies, payments by Minister to municipalities) is, if it so provides, effective with reference to a period before it is filed. Idem

(4) The Minister shall prescribe, Idem

- (a) standards of services; and
- (b) procedures and practices to be followed by societies,

for the purposes of subsection 15 (4).

**198.** The Lieutenant Governor in Council may make regulations for the purposes of Part II, Regulations:  
Part II  
(Voluntary  
Access to  
Services)

- (a) defining "counselling";
- (b) prescribing provisions to be contained in agreements made under section 29 (temporary care agreements) and sections 30 and 31 (special needs agreements);
- (c) requiring that residential placements with or by service providers be made in accordance with written

agreements, and prescribing their form and contents;

- (d) prescribing practices, procedures and further duties for advisory committees;
- (e) further defining “special need” and “developmental handicap”.

Regulations:  
Part III  
(Child  
Protection)

**199.** The Lieutenant Governor in Council may make regulations for the purposes of Part III,

- (a) governing the exercise of the powers of entry set out in subsections 40 (5) and (14);
- (b) assigning to a Director any powers, duties or obligations of the Crown with respect to Crown wards;
- (c) prescribing the care and maintenance that may be provided to a former Crown ward under subsection 67 (2), and the terms and conditions on which the care and maintenance may be provided;
- (d) prescribing the form in which reports are to be made under subsection 71 (3);
- (e) respecting the manner in which the register referred to in subsection 71 (5) is to be kept;
- (f) requiring the removal of a name from the register referred to in subsection 71 (5), or the amendment of the register, under specified circumstances, and specifying those circumstances;
- (g) prescribing practices and procedures for hearings held under clause 72 (4) (b) (amendment of register).

Regulations:  
Part IV  
(Young  
Offenders)

**200.—**(1) The Lieutenant Governor in Council may make regulations for the purposes of Part IV,

- (a) governing the establishment, operation, maintenance, management and use of places of temporary detention, open custody and secure custody and other services and programs provided under subsection 85 (1);
- (b) governing the establishment and operation of and the accommodation, equipment and services to be provided in any premises or class of premises estab-

lished, operated, maintained or designated for the purposes of the federal Act or for providing services or programs under subsection 85 (1);

- (c) prescribing additional duties and functions of,
  - (i) probation officers, and
  - (ii) provincial directors;
- (d) prescribing the duties and functions of bailiffs;
- (e) prescribing the qualifications of probation officers;
- (f) prescribing additional duties and functions of persons in charge of places of temporary detention, open custody and secure custody;
- (g) prescribing reports to be made and information to be furnished under section 88, their form and the intervals at which they are to be made or furnished;
- (h) governing the conduct, discipline, rights and privileges of young persons in places of temporary detention, open custody or secure custody or any class of them or in a service or program provided under subsection 85 (1);
- (i) prescribing procedures for the admission of young persons to and their discharge from places of temporary detention, open custody or secure custody or any class of them or premises in which a service or program is provided under subsection 85 (1);
- (j) prescribing classes of payment by way of provincial aid for the establishment, operation or maintenance of places of temporary detention, open custody or secure custody, the methods of determining the payments, the manner and time of making them, the terms and conditions of such payments and the circumstances under which such payments may be suspended or withheld or deductions may be made from them;
- (k) prescribing the number of members of the Board, their terms of office and the number of members that is a quorum;
- (l) prescribing additional powers, duties and procedures of the Board;



- (m) governing the exercise of the power of entry given by a warrant issued under subsection 94 (4);
- (n) respecting any matter considered necessary or advisable to carry out effectively the intent and purpose of Part IV.

Idem

(2) A regulation made under clause (1) (j) (classes of payment by way of provincial aid) is, if it so provides, effective with reference to a period before it is filed.

Regulations:  
Part V  
(Rights of  
Children)

**201.** The Lieutenant Governor in Council may make regulations for the purposes of Part V,

- (a) governing internal complaints procedures to be established under section 105;
- (b) establishing procedures for reviews under section 106;
- (c) prescribing additional functions of the Office of Child and Family Service Advocacy.

Regulations:  
Part VI  
(Extra-  
ordinary  
Measures)

**202.** The Lieutenant Governor in Council may make regulations for the purposes of Part VI,

- (a) prescribing procedures for the admission of children to and their discharge from secure treatment programs;
- (b) prescribing standards for secure treatment programs;
- (c) prescribing standards for secure isolation rooms;
- (d) prescribing procedures to be followed when a child is placed in or released from a secure isolation room;
- (e) prescribing the frequency of reviews under subsection 121 (6);
- (f) prescribing matters to be reviewed and prescribing additional reports under section 122;
- (g) prescribing procedures as intrusive procedures;
- (h) prescribing the intervals at which reports are to be made by review teams under subsection 123 (5);

- (i) prescribing drugs or combinations of drugs as psychotropic drugs;
- (j) prescribing forms and requiring their use.

**203.** The Lieutenant Governor in Council may make regulations for the purposes of Part VII, Regulations:  
Part VII  
(Adoption)

- (a) prescribing the form of an affidavit of execution for the purposes of subsection 131 (12);
- (b) prescribing the manner in which placements are to be registered under subsection 135 (6);
- (c) prescribing special circumstances for the purposes of subsection 136 (4) (placement outside Canada);
- (d) prescribing forms and providing for their use;
- (e) prescribing classes of information for the purposes of clause 157 (2) (d) (disclosure by Director);
- (f) prescribing expenses that may be charged under clause 159 (d), classes of such expenses and the terms and conditions under which such expenses or classes of expenses may be charged.

**204.** The Lieutenant Governor in Council may make regulations for the purposes of Part VIII, Regulations:  
Part VIII  
(Confidentiality of  
and Access  
to Records)

- (a) prescribing the manner in which a Director's approval is to be obtained under subsection 166 (2) (disclosure for research);
- (b) prescribing review procedures for the Board under subsection 171 (3);
- (c) prescribing provisions for the purposes of subsection 174 (2) (service providers' codes of procedure);
- (d) prescribing retention, storage and destruction schedules for the purposes of subsection 174 (3).

**205.** The Lieutenant Governor in Council may make regulations for the purposes of Part IX, Regulations:  
Part IX  
(Licensing)

- (a) governing the establishment, management, operation and use of children's residences, and other

premises where residential care is provided under the authority of a licence;

- (b) defining “common parentage” for the purposes of clause 175 (a) and clause 176 (1) (b);
- (c) governing the issuing, renewal and expiry of licences and prescribing fees payable by an applicant for a licence or its renewal;
- (d) governing the exercise of the power of entry set out in subsection 177 (1);
- (e) governing the establishment of and the accommodation, facilities, equipment and services to be provided in,

- (i) children’s residences, and

- (ii) other premises where residential care is provided under the authority of a licence,

or any class of them;

- (f) exempting designated,

- (i) children’s residences,

- (ii) other premises where residential care is provided under the authority of a licence, or

- (iii) persons placing children for adoption,

or any class of them, from any provision of this Part or the regulations for a prescribed period, and prescribing the period;

- (g) prescribing the accounts and records to be kept by licensees;
- (h) prescribing the qualifications, powers and duties of persons supervising children in,

- (i) children’s residences, or

- (ii) other premises where residential care is provided under the authority of a licence,

or any class of them;

- (i) governing procedures for the admission to and discharge of children from,

- (i) children's residences, or

- (ii) other premises where residential care is provided under the authority of a licence,

or any class of them;

- (j) requiring the operators of children's residences or persons who provide residential care or place children for adoption under the authority of a licence to provide the prescribed information and to make the prescribed returns and reports, and prescribing the information, returns and reports;
- (k) prescribing the number of members of the Board, their terms of office and the number of members that is a quorum;
- (l) prescribing additional powers, duties and procedures of the Board;
- (m) governing the placement of children for adoption;
- (n) prescribing rules and standards governing the placement of children by licensees for adoption;
- (o) providing for the inspection of the records of persons licensed to place children for adoption;
- (p) governing the qualifications of persons or classes of persons employed by persons licensed to place children for adoption;
- (q) requiring persons licensed to place children for adoption to be bonded or to submit letters of credit in the prescribed form and terms and with the prescribed collateral security, prescribing the form, terms and collateral security and providing for the forfeiture of bonds and letters of credit and the disposition of the proceeds;
- (r) prescribing forms and providing for their use.

**206.** The Lieutenant Governor in Council may make regulations for the purposes of Part X,

Regulations:  
Part X  
(Indian and  
Native Child  
and Family  
Services)

- (a) exempting an Indian or native child and family service authority, a band or native community or specified persons or classes of persons, including persons caring for children under customary care, from any provision of this Act or the regulations;
- (b) prescribing matters requiring consultation between societies or agencies and bands or native communities for the purposes of clause 196 (h).



## PART XII

## TRANSITION AND REPEALS

**207.** Subclause 1 (c) (i) of the *Charitable Institutions Act*, being chapter 64 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

- (i) a children's residence under Part IX (Licensing) of the *Child and Family Services Act*, 1984, c. ... 1984, or premises approved under subsection 9 (1) of Part I (Flexible Services) of that Act.

**208.**—(1) The *Child Welfare Act*, being chapter 66 of the Revised Statutes of Ontario, 1980, paragraph 2 of the Schedule to the *Revised Statutes Amendment Act, 1981*, being chapter 66 and section 17 of the *Municipal Conflict of Interest Act, 1983*, being chapter 8, are repealed.

(2) Despite subsection (1),

Transition

- (a) a children's aid society that is in operation in a territorial jurisdiction on the day this section comes into force shall be deemed to be an approved agency and to have been designated as a society under subsection 15 (2) of Part I (Flexible Services) for that territorial jurisdiction for all the functions set out in subsection 15 (3) of that Part;
- (b) a person whose appointment as a Director under the *Child Welfare Act* is in effect on the day this section comes into force shall be deemed to have been appointed as a Director under subsection 5 (1) of Part I (Flexible Services) to perform all the duties and functions and exercise all the powers of a Director under this Act and the regulations;
- (c) a licence issued or renewed under the said Act that is in effect on the day this section comes into force continues in effect under Part IX (Licensing) until the term for which it was issued expires or until it is otherwise terminated under that Part;
- (d) the said Act continues to apply to a proceeding commenced under Part II (Protection and Care of Children) of the said Act before the day this section comes into force; and
- (e) the said Act continues to apply to an application for an adoption order in respect of a child who is placed

for adoption before the day this section comes into force.

Exception

(3) Clause (2) (a) does not apply to The Jewish Family and Child Service of Metropolitan Toronto.

**209.**—(1) The *Children's Institutions Act*, being chapter 67 of the Revised Statutes of Ontario, 1980, is repealed.

Transition

(2) Despite subsection (1),

- (a) an approval under the said Act that is in effect on the day this section comes into force continues in effect under Part I (Flexible Services) until it is terminated under that Part or until a new approval is given under that Part;
- (b) a person whose appointment as a Director under the said Act is in effect on the day this section comes into force shall be deemed to have been appointed as a Director under subsection 5 (1) of Part I (Flexible Services) to perform all the duties and functions and exercise all the powers of a Director under this Act and the regulations; and
- (c) a person whose appointment as a program adviser under the said Act is in effect on the day this section comes into force shall be deemed to have been appointed as a program supervisor under subsection 5 (2) of Part I (Flexible Services) to perform all the duties and functions and exercise all the powers of a program supervisor under this Act and the regulations.

**210.**—(1) The *Children's Residential Services Act*, being chapter 71 of the Revised Statutes of Ontario, 1980, is repealed.

Transition

(2) Despite subsection (1),

- (a) a licence issued or renewed under the said Act that is in effect on the day this section comes into force continues in effect under Part IX (Licensing) until the term for which it was issued expires or until it is otherwise terminated under that Part ; and
- (b) a person whose appointment as a Director under the said Act is in effect on the day this section comes into force shall be deemed to have been appointed as a Director under subsection 5 (1) of Part I (Flexible

Services) to perform all the duties and functions and exercise all the powers of a Director under this Act and the regulations; and

- (c) a person whose appointment as a program adviser under the said Act is in effect on the day this section comes into force shall be deemed to have been appointed as a program supervisor under subsection 5 (2) of Part I (Flexible Services) to perform all the duties and functions and exercise all the powers of a program supervisor under this Act and the regulations.

**211.**—(1) The *Children's Mental Health Services Act*, being chapter 69 of the Revised Statutes of Ontario, 1980, is repealed.

(2) Despite subsection (1),

Transition

- (a) an approval under the said Act that is in effect on the day this section comes into force continues in effect under Part I (Flexible Services) until it is terminated under that Part or until a new approval is given under that Part;
- (b) a person whose appointment as a Director under the said Act is in effect on the day this section comes into force shall be deemed to have been appointed as a Director under subsection 5 (1) of Part I (Flexible Services) to perform all the duties and functions and exercise all the powers of a Director under this Act and the regulations; and
- (c) a person whose appointment as a program adviser under the said Act is in effect on the day this section comes into force shall be deemed to have been appointed as a program supervisor under subsection 5 (2) of Part I (Flexible Services) to perform all the duties and functions and exercise all the powers of a program supervisor under this Act and the regulations.

**212.**—(1) Clauses 10 (2) (b), (c) and (i) of the *Coroners Act*, being chapter 93 of the Revised Statutes of Ontario, 1980, are repealed and the following substituted therefor:

- (b) a children's residence under Part IX (Licensing) of the *Child and Family Services Act*, 1984 or premises approved under subsection 9 (1) of Part I (Flexible Services) of that Act. 1984, c. ...

**(2) Subsections 10 (3) and (4) of the said Act are repealed and the following substituted therefor:**

Inmate off  
premises

(3) Where a person dies while he is,

(a) a patient of a psychiatric facility;

(b) committed to a correctional institution;

R.S.O. 1980,  
c. 508

(c) a ward of the Crown under the *Training Schools Act*; or

S.C. 1980-  
81-82-83, c.  
110

(d) committed to secure custody or open custody under the *Young Offenders Act* (Canada),

but while not on the premises or in actual custody of the facility, institution, training school or place of custody, as the case may be, subsections (1) and (2) apply as if the person were a resident of an institution named therein.

Persons in  
custody

(4) Where a person dies while detained by or in the actual custody of a peace officer or while an inmate on the premises of a correctional institution, lock-up, training school or place or facility designated as a place of-secure custody under section 24 of the *Young Offenders Act* (Canada), the peace officer or officer in charge of the institution, lock-up, training school or place or facility, as the case may be, shall immediately give notice of the death to a coroner and the coroner shall issue his warrant to hold an inquest upon the body.

S.C. 1980-  
81-82-83, c.  
110

**213.—(1) Clause 47 (1) (a) of the *Courts of Justice Act, 1984*, being chapter 11, is repealed and the following substituted therefor:**

(a) shall be deemed to be and shall sit as the Provincial Offences Court,

R.S.O. 1980,  
c. 400

(i) for the purpose of dealing with young persons as defined in the *Provincial Offences Act*, and

1984, c. ...

(ii) for the purposes of prosecutions under Part III (Child Protection) and Part VII (Adoption) of the *Child and Family Services Act, 1984*; and

**(2) The Schedule to Part III of the said Act is repealed and the following substituted therefor:**



## SCHEDULE

Jurisdiction under the following statutory provisions:

Statutes	Provisions
1. Annulment of Marriages Act (Ontario) (Canada)	All
2. Child and Family Services Act, 1984	Parts III, VI and VII
3. Children's Law Reform Act	All, except sections 60 and 61
4. Divorce Act (Canada)	All
5. Education Act	Sections 29 and 30
6. Family Law Reform Act	All, except Part V
7. Marriage Act	Sections 6 and 9
8. Minors' Protection Act	Section 2
9. Reciprocal Enforcement of Maintenance Orders Act, 1982	All
10. Young Offenders Act (Canada)	All

**(3) Section 70 of the said Act is amended by adding thereto the following subsection:**

(1a) A proceeding in the Provincial Offences Court under Part III (Child Protection) or Part VII (Adoption) of the *Child and Family Services Act, 1984* shall be conducted in the Provincial Court (Family Division) or, in the Judicial District of Hamilton-Wentworth, in the Unified Family Court, sitting as the Provincial Offences Court. Sittings  
1984, c. ...

**(4) Clause 75 (1) (a) of the said Act is repealed and the following substituted therefor:**

(a) shall be deemed to be and shall sit as the Provincial Offences Court,

(i) for the purpose of dealing with young persons as defined in the *Provincial Offences Act*, and R.S.O. 1980,  
c. 400

(ii) for the purposes of prosecutions under Part III (Child Protection) and Part VII (Adoption) of the *Child and Family Services Act, 1984*. 1984, c. ...

**214.—(1) Subclauses 19 (5) (a) (i) and (vi) of the *Crown Employees Collective Bargaining Act*, being chapter 108 of the Revised Statutes of Ontario, 1980, are repealed and the following substituted therefor:**



1984, c. . . .

- (i) premises where services are provided by the Minister under the *Child and Family Services Act, 1984*,

. . . . .

S.C. 1980-  
81-82-83, c.  
110

- (vi) a place or facility designated under subsection 7 (1) of the *Young Offenders Act* (Canada) as a place of temporary detention.

(2) Clause 19 (5) (a) of the said Act is amended by adding thereto the following subclause:

- (viii) a place or facility designated as a place of secure custody or as a place of open custody under section 24 of the *Young Offenders Act* (Canada).

**215.**—(1) Clause 1 (c) of the *Day Nurseries Act*, being chapter 111 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

1984, c. ...

- (c) “Board” means the Children’s Services Review Board continued under Part IX (Licensing) of the *Child and Family Services Act, 1984*.

(2) Subclause 1 (d) (v) of the said Act is repealed.

(3) Subsection 13 (5) of the said Act is repealed and the following substituted therefor:

Application  
of 1984,  
c. ...

- (5) Sections 182, 184 and 185 of Part IX of the *Child and Family Services Act, 1984* apply with necessary modifications to proceedings before the Board, to the powers of the Board under this Act and to appeals therefrom.

**216.**—(1) Clause 43 (c) of the *Education Act*, being chapter 129 of the Revised Statutes of Ontario, 1980, is amended by striking out “the *Children’s Residential Services Act*” in the second and third lines and inserting in lieu thereof “Part IX (Licensing) of the *Child and Family Services Act, 1984*”.

(2) Subsection 166 (2) of the said Act is amended by striking out “a children’s mental health centre approved under the *Children’s Mental Health Services Act*” in the ninth and tenth lines and inserting in lieu thereof “premises approved under subsection 9 (1) of Part I (Flexible Services) of the *Child and Family Services Act, 1984* for the provision of a child development service or child treatment service”.

**217.** Subsection 52 (1) of the *Health Insurance Act*, being chapter 197 of the Revised Statutes of Ontario, 1980, is amended by striking out “a children’s mental health centre or an approved children’s mental health centre under the *Children’s Mental Health Services Act*” in the third, fourth and fifth lines.

**218.**—(1) Subclauses 1 (d) (iii) and (iv) of the *Homes for Retarded Persons Act*, being chapter 201 of the Revised Statutes of Ontario, 1980, are repealed and the following substituted therefor:

- (iii) premises approved under subsection 9 (1) of Part I (Flexible Services) of the *Child and Family Services Act, 1984*, a children’s residence licensed under Part IX (Licensing) of that Act or a foster home within the meaning of that Act. 1984, c. ...

(2) Subclauses 1 (d) (i) and (viii) of the said Act are repealed.

(3) Section 8 of the said Act is amended by striking out “the *Child Welfare Act*” in the thirteenth and fourteenth lines and inserting in lieu thereof “Part III (Child Protection) of the *Child and Family Services Act, 1984*”.

**219.**—(1) The Preamble to *The Jewish Family and Child Service of Metropolitan Toronto Act, 1980*, being chapter 105, is amended by striking out “*The Child Welfare Act, 1978*” in the seventeenth line and inserting in lieu thereof “the *Child and Family Services Act, 1984*”.

(2) Sections 1 and 2 of the said Act are repealed and the following substituted therefor:

**1.** For the purposes of every Act, the Corporation is deemed to be a children’s aid society designated under subsection 15 (2) of the *Child and Family Services Act, 1984*, for the territorial jurisdiction in which it operates on the day section 219 of that Act comes into force, for all the functions set out in subsection 15 (3) of that Act. Corporation deemed to be a children’s aid society 1984, c. . . .

**2.** Despite section 1,

- (a) sections 18 and 19 (municipal representatives, payments by Minister and municipalities), subsection 20 (1) (municipal levies) and clause 22 (1) (f) (revoca-

Non-application of certain provisions

1984, c. . . .

tion and take-over powers) of the *Child and Family Services Act, 1984* do not apply to the Corporation; and

- (b) the powers conferred on the Corporation to apprehend and detain children under section 40 of that Act shall be exercised only within The Municipality of Metropolitan Toronto.

**220.** Clause 6a (b) of the *Ministry of Community and Social Services Act*, being chapter 273 of the Revised Statutes of Ontario, 1980, as enacted by the Statutes of Ontario, 1981, chapter 39, section 2, is repealed and the following substituted therefor:



1984, c. . . .

R.S.O. 1980,  
c. 508

S.C. 1980-  
81-82-83, c.  
110

- (b) any other person who is a Crown ward under Part III (Child Protection) of the *Child and Family Services Act, 1984* or the *Training Schools Act* or held in a place or facility designated as a place of secure custody or as a place of open custody under section 24 of the *Young Offenders Act* (Canada) or as a place of temporary detention under subsection 7 (1) of that Act.



**221.** Clause 1 (c) of the *Ministry of Correctional Services Act*, being chapter 275 of the Revised Statutes of Ontario, 1980, is amended by inserting after “Act” in the fourth line “a place or facility designated as a place of secure custody or as a place of open custody under section 24 of the *Young Offenders Act* (Canada) or as a place of temporary detention under subsection 7 (1) of that Act”.

**222.** Subsection 160 (3) of the *Municipal Act*, being chapter 302 of the Revised Statutes of Ontario, 1980, is amended by inserting after “training school” in the fourth line “or place of secure custody designated under section 24 of the *Young Offenders Act* (Canada)”.

**223.** Subclauses 1 (g) (ii) and (iii) of the *Nursing Homes Act*, being chapter 320 of the Revised Statutes of Ontario, 1980, are repealed and the following substituted therefor:

1984, c. ...

- (ii) the *Child and Family Services Act, 1984*.

**224.** Clause 23 (1) (c) of the *Occupational Health and Safety Act*, being chapter 321 of the Revised Statutes of Ontario, 1980, is amended by striking out “detention and observation home” in the third line and inserting in lieu thereof “place of secure custody designated under section 24 of the *Young*

*Offenders Act* (Canada) or place of temporary detention designated under subsection 7 (1) of that Act”.

**225.** Subsection 17 (2) of the *Ombudsman Act*, being chapter 325 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

(2) Notwithstanding any provision in any Act, where any letter written by, To be forwarded

- (a) an inmate of any provincial correctional institution;
- (b) a ward of the Crown under the *Training Schools Act*; R.S.O. 1980, c. 508
- (c) a person held in a place of secure or open custody designated under section 24 of the *Young Offenders Act* (Canada); or S.C. 1980-81-82-83, c. 110
- (d) a patient in a provincial psychiatric facility,

is addressed to the Ombudsman it shall be immediately forwarded, unopened, to the Ombudsman by the person for the time being in charge of the institution, training school, place of secure or open custody or facility.

**226.** Subclause 1 (h) (iv) of the *Private Hospitals Act*, being chapter 389 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

- (iv) a children's residence licensed under Part IX (Licensing) of the *Child and Family Services Act*, 1984. 1984, c. . . .

**227.—(1)** Subclauses 21 (1) (a) (ii), (iii) and (iv) of the *Health Protection and Promotion Act*, 1983, being chapter 10, are repealed and the following substituted therefor:

- (ii) premises approved under subsection 9 (1) of Part I (Flexible Services) of the *Child and Family Services Act*, 1984, 1984, c. ...
- (iii) children's residence within the meaning of Part IX (Licensing) of the *Child and Family Services Act*, 1984.

(2) Clause 21 (1) (a) of the said Act is amended by adding thereto the following subclause:



S.C. 1980-  
81-82-83, c.  
110

(xviii) place or facility designated as a place of secure custody under section 24 of the *Young Offenders Act* (Canada).

**(3) Subsections 37 (1) and (2) of the said Act are repealed and the following substituted therefor:**

Examination  
of person  
under  
detention

(1) A physician who provides medical services in a correctional institution, a training school, a place of secure custody, a lock-up or a place of temporary detention and who is of the opinion that a person detained therein is infected or may be infected with an agent of a communicable disease shall notify forthwith the medical officer of health of the health unit in which the institution is located.

Order by  
M.O.H. re  
person under  
detention

(2) A medical officer of health by order may require the superintendent of a correctional institution, a training school, a place of secure custody, a lock-up or a place of temporary detention located in the health unit served by the medical officer of health to take such action as is specified in the order to prevent the infection of others by a person who is detained in the correctional institution, training school, place of secure custody, lock-up or place of temporary detention and who has been examined and found to be infected with an agent of a communicable disease.

**(4) Clause 37 (3) (c) of the said Act is repealed and the following substituted therefor:**

S.C. 1980-  
81-82-83, c.  
110

(c) “place of secure custody” means a place or facility designated as a place of secure custody under section 24 of the *Young Offenders Act* (Canada);

(ca) “place of temporary detention” means a place or facility designated as a place of temporary detention under subsection 7 (1) of the *Young Offenders Act* (Canada).

**228.—(1) Sections 1 to 8 and subsections 9 (1), (2) and (3) of the *Young Offenders Implementation Act*, 1984, being chapter 19, are repealed.**

Transition

**(2) Despite subsection (1),**

(a) services and programs established under subsection 3 (1) of the said Act on or before the day this section comes into force are continued under subsection 85 (1) of Part IV (*Young Offenders*);



- (b) a person whose appointment as a provincial director under the said Act is in effect on the day this section comes into force shall be deemed to have been appointed as a provincial director under clause 86 (1) (a) of Part IV (Young Offenders) to perform all the duties and functions of a provincial director,

(i) under the federal Act, and

(ii) under the regulations;

- (c) a person whose appointment as a probation officer under the said Act is in effect on the day this section comes into force shall be deemed to have been appointed as a probation officer under clause 86 (1) (b) of Part I (Flexible Services) to perform all the duties and functions,

(i) of a youth worker under the federal Act, and

(ii) of a probation officer for the purpose of dealing with young persons under the *Provincial Offences Act*, and

R.S.O. 1980,  
c. 400

(iii) of a probation officer under the regulations;  
and

- (d) a person whose appointment as a program supervisor under the said Act is in effect on the day this section comes into force shall be deemed to have been appointed as a program supervisor under subsection 5 (2) of Part I (Flexible Services) to perform all the duties and functions and exercise all the powers of a program supervisor under this Act and the regulations.

**229.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Commence-  
ment

**230.** The short title of this Act is the *Child and Family Services Act, 1984*.

Short title







Bill 77

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4TH SESSION, 32ND LEGISLATURE, ONTARIO

33 ELIZABETH II, 1984

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# Bill 77

(Chapter 55  
*Statutes of Ontario, 1984*)

## **An Act respecting the Protection and Well-being of Children and their Families**

The Hon. F. Drea  
*Minister of Community and Social Services*

---

<i>1st Reading</i>	May 18th, 1984
<i>2nd Reading</i>	June 20th, 1984
<i>3rd Reading</i>	December 11th, 1984
<i>Royal Assent</i>	December 14th, 1984

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6  
**Bill 77**

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4TH SESSION, 32ND LEGISLATURE, ONTARIO

33 ELIZABETH II, 1984

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**Bill 77**

*(Chapter 55  
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**Bill 77**

**1984**

## An Act respecting the Protection and Well-being of Children and their Families

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HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1. The purposes of this Act are,**

Declaration  
of  
principles

- (a) as a paramount objective, to promote the best interests, protection and well-being of children;
- (b) to recognize that while parents often need help in caring for their children, that help should give support to the autonomy and integrity of the family unit and, wherever possible, be provided on the basis of mutual consent;
- (c) to recognize that the least restrictive or disruptive course of action that is available and is appropriate in a particular case to help a child or family should be followed;
- (d) to recognize that children's services should be provided in a manner that,
  - (i) respects children's needs for continuity of care and for stable family relationships, and
  - (ii) takes into account physical and mental developmental differences among children;
- (e) to recognize that, wherever possible, services to children and their families should be provided in a manner that respects cultural, religious and regional differences; and
- (f) to recognize that Indian and native people should be entitled to provide, wherever possible, their own child and family services, and that all services to Indian and native children and families should be provided in a manner that recognizes their culture, heritage and traditions and the concept of the extended family.

French  
language  
services

**2.—**(1) Service providers shall, where appropriate, make services to children and their families available in the French language.

Duties of  
service  
providers

- (2) Service providers shall ensure,
- (a) that children and their parents have an opportunity where appropriate to be heard and represented when decisions affecting their interests are made and to be heard when they have concerns about the services they are receiving; and
  - (b) that decisions affecting the interests and rights of children and their parents are made according to

clear, consistent criteria and are subject to procedural safeguards.

#### INTERPRETATION

### 3.—(1) In this Act,

Interpretation

1. “agency” means a corporation;
2. “approved agency” means an agency that is approved under subsection 8 (1) of Part I (Flexible Services);
3. “approved service” means a service provided,
  - i. under subsection 7 (1) of Part I or with the support of a grant or contribution made under subsection 7 (2) of that Part,
  - ii. by an approved agency, or
  - iii. under the authority of a licence;
4. “band” has the same meaning as in the *Indian Act* (Canada); R.S.C. 1970,  
c. I-6
5. “Board” means the Children’s Services Review Board continued under Part IX (Licensing);
6. “child” means a person under the age of eighteen years;
7. “child development service” means a service for a child with a developmental or physical handicap, for the family of a child with a developmental or physical handicap, or for the child and the family;
8. “child treatment service” means a service for a child with a mental or psychiatric disorder, for the family of a child with a mental or psychiatric disorder, or for the child and the family;
9. “child welfare service” means,
  - i. a residential or non-residential service, including a prevention service,
  - ii. a service provided under Part III (Child Protection),

iii. a service provided under Part VII (Adoption),  
or

iv. individual or family counselling;

10. “community support service” means a support service or prevention service provided in the community for children and their families;

11. “court” means the Provincial Court (Family Division) or the Unified Family Court;

12. “developmental handicap” means a condition of mental impairment present or occurring in a person’s formative years that is associated with limitations in adaptive behaviour;

13. “Director” means a Director appointed under subsection 5 (1) of Part I (Flexible Services);

14. “foster care” means the provision of residential care to a child, by and in the home of a person who,

i. receives compensation for caring for the child, except under the *Family Benefits Act*, the *General Welfare Assistance Act*, or the regulations made under either of them, and

ii. is not the child’s parent or a person with whom the child has been placed for adoption under Part VII,

and “foster home” and “foster parent” have corresponding meanings;

R.S.O. 1980,  
cc. 151, 188

R.S.C. 1970,  
c. 1-6

15. “Indian” has the same meaning as in the *Indian Act* (Canada);

16. “licence” means a licence issued under Part IX (Licensing), and “licensed” and “licensee” have corresponding meanings;

17. “local director” means a local director appointed under section 16 of Part I (Flexible Services);

18. “Minister” means the Minister of Community and Social Services;

19. "native community" means a community designated by the Minister under section 192 of Part X (Indian and Native Child and Family Services);
20. "native person" means a person who is a member of a native community but is not a member of a band, and "native child" has a corresponding meaning;
21. "order" includes a refusal to make an order;
22. "prescribed" means prescribed by the regulations;
23. "program supervisor" means a program supervisor appointed under subsection 5 (2) of Part I (Flexible Services);
24. "regulations" means the regulations made under this Act;
25. "residential service" means boarding, lodging and associated supervisory, sheltered or group care provided for a child away from the home of the child's parent, and "residential care" and "residential placement" have corresponding meanings;
26. "service" means,
  - i. a child development service,
  - ii. a child treatment service,
  - iii. a child welfare service,
  - iv. a community support service, or
  - v. a young offenders service;
27. "service provider" means,
  - i. the Minister,
  - ii. an approved agency,
  - iii. a society,
  - iv. a licensee, or



- v. a person who provides an approved service or provides a service purchased by the Minister or an approved agency,

but does not include a foster parent;

- 28. "society" means an approved agency designated as a children's aid society under subsection 15 (2) of Part I (Flexible Services);
- 29. "young offenders service" means a service provided under Part IV (Young Offenders) or under a program established under that Part.

Idem:  
"parent"

(2) In this Act, a reference to a child's parent shall be deemed to be a reference to,

- (a) both parents, where both have custody of the child;
- (b) one parent, where that parent has lawful custody of the child or the other parent is unavailable or unable to act as the context requires; or
- (c) another individual, where that individual has lawful custody of the child,

except where this Act provides otherwise.

#### CONSENTS AND PARTICIPATION IN AGREEMENTS

Interpretation

#### 4.—(1) In this section,

- (a) "capacity" means the capacity to understand and appreciate the nature of a consent or agreement and the consequences of giving, withholding, or revoking the consent or making, not making or terminating the agreement; and
- (b) "nearest relative", when used in reference to a person who is a child, means a person with lawful custody of the child, and when used in reference to a person who is not a child, has the same meaning as in the *Mental Health Act*.

R.S.O. 1980,  
c. 262

Elements of  
valid consent  
or  
agreement,  
etc.

(2) A person's consent or revocation of a consent or participation in or termination of an agreement under this Act is valid if, at the time the consent is given or revoked or the agreement is made or terminated, the person,

- (a) has capacity;

- (b) is reasonably informed as to the nature and consequences of the consent or agreement, and of alternatives to it;
- (c) gives or revokes the consent or executes the agreement or notice of termination voluntarily, without coercion or undue influence; and
- (d) has had a reasonable opportunity to obtain independent advice.

(3) A person's nearest relative may give or revoke a consent or participate in or terminate an agreement on the person's behalf if it has been determined on the basis of an assessment, not more than one year before the nearest relative acts on the person's behalf, that the person does not have capacity.

Where  
person  
lacks  
capacity

(4) Subsection (3) does not apply to a consent under section 131 (consents to adoption) of Part VII (Adoption) or to a parent's consent referred to in clause 37 (2) (1) (child in need of protection) of Part III (Child Protection).

Exception

(5) A person's consent or revocation of a consent or participation in or termination of an agreement under this Act is not invalid by reason only that the person is less than eighteen years old.

Consent,  
etc., of  
minor

## PART I

## FLEXIBLE SERVICES

## DIRECTORS AND PROGRAM SUPERVISORS

Appointment of Director      **5.**—(1) The Minister may appoint any person as a Director to perform any or all of the duties and functions and exercise any or all of the powers of a Director under this Act and the regulations.

Appointment of program supervisor      (2) The Minister may appoint any person as a program supervisor to perform any or all of the duties and functions and exercise any or all of the powers of a program supervisor under this Act and the regulations.

Limitations, etc., on appointments      (3) The Minister may set out in an appointment made under this section any conditions or limitations to which it is subject.

Remuneration and expenses  
R.S.O. 1980, c. 418      (4) The remuneration and expenses of a person appointed under this section who is not a public servant under the *Public Service Act* shall be fixed by the Minister and shall be paid out of legislative appropriations.

Reports and information      (5) A service provider shall,  
  
           (a) make the prescribed reports and furnish the prescribed information to the Minister, in the prescribed form and at the prescribed intervals; and  
           (b) make a report to the Minister whenever the Minister requests it, in the form and containing the information specified by the Minister.

Powers of program supervisor      **6.**—(1) For the purpose of ensuring compliance with this Act and the regulations a program supervisor may, at all reasonable times, upon producing proper identification, enter premises where an approved service is provided, inspect the facilities, the service provided, the books of account and the records relating to the service, and make copies of those books and records or remove them from the premises to copy them as may be reasonably required.

Offence      (2) No person shall hinder, obstruct or attempt to hinder or obstruct a program supervisor in the performance of the program supervisor's duties or knowingly give false information about an approved service to a program supervisor.

Idem      (3) No service provider or person in charge of premises where an approved service is provided shall refuse to give a

program supervisor access to the books and records referred to in subsection (1) or refuse to give a program supervisor information about the approved service that the program supervisor reasonably requires.

(4) A program supervisor shall exercise the power of entry set out in subsection (1) in accordance with the regulations.

Regulations re exercise of power of entry

#### APPROVALS AND FUNDING

**7.—**(1) The Minister may,

Provision of services directly or by purchase

- (a) provide services and establish, operate and maintain facilities for the provision of services; and
- (b) make agreements with persons, municipalities and agencies for the provision of services,

and may make payments for those services and facilities out of legislative appropriations.

(2) The Minister may make grants and contributions, out of legislative appropriations, to any person, organization or municipality for consultation, research and evaluation with respect to services and for the provision of services.

Grants and contributions for services, consultation, etc.

**8.—**(1) Where the Minister is satisfied that an agency is, with financial assistance under this Part and the regulations, financially capable of establishing, maintaining and operating a service and that its affairs are carried on under competent management in good faith, the Minister may approve the agency to provide that service.

Approval of agencies

(2) Where the Minister intends to approve an agency to provide a service under subsection (1), the Minister may enter into an agreement with the agency for the establishment of the service.

Funding for establishment of services

(3) Where the Minister approves an agency to provide a service under subsection (1), the Minister may give the agency financial and other assistance, in accordance with the regulations.

Financial assistance, etc.

(4) The Minister's approval under subsection (1) shall be deemed to have retroactive effect if the Minister so specifies.

Effective date

**9.—**(1) Where the Minister is satisfied that premises are suitable for providing a service, the Minister may approve all or any part of the premises for the provision of the service by an approved agency and may give the agency financial and

Approval of premises for provision of services



other assistance in accordance with the regulations, for the maintenance and operation of the premises and the provision of the service.

Approval may relate to all or part of building, etc.

(2) The Minister's approval under subsection (1) may specify a building, a group of buildings, part of a building or a location in a building as the approved premises.

Effective date

(3) The Minister's approval of premises under subsection (1) shall be deemed to have retroactive effect if the Minister so specifies, but it shall not be deemed to take effect on a day before the Minister's approval of the agency concerned becomes effective under section 8.

Terms and conditions

**10.**—(1) The Minister may impose terms and conditions on an approval given under subsection 8 (1) or 9 (1) and, upon reasonable written notice to the approved agency, may vary, remove or amend the terms and conditions or impose new terms and conditions.

Duty of Director

(2) A Director shall review any objections from an approved agency which has received notice under subsection (1).

Transfer of assets

(3) An approved agency shall not transfer or assign any of its assets acquired with financial assistance from the Province of Ontario, except in accordance with the regulations.

Services to persons over eighteen

(4) The Minister may,

- (a) provide services under clause 7 (1) (a);
- (b) make agreements for the provision of services under clause 7 (1) (b);
- (c) make grants and contributions for the provision of services under subsection 7 (2);
- (d) approve agencies for the provision of services under subsection 8 (1);
- (e) approve premises for the provision of services under subsection 9 (1),

to persons who are not children, and to their families, as if those persons were children.

Co-ordinating or advisory groups

**11.** The Minister may make agreements with persons, organizations or municipalities for the establishment, support



and operation of co-ordinating or advisory groups or committees, may make payments for the purpose out of legislative appropriations and may give other assistance for the purpose.

**12.** The Minister may, as a condition of making a payment under this Part or the regulations, require the recipient of the funds to secure them by way of mortgage, lien, registration of agreement or in such other manner as the Minister determines.

Security for  
payment of  
funds

**13.—**(1) An approved agency shall file a certified copy of its by-laws and of any amendment to them with the Minister forthwith after they are made.

By-laws of  
approved  
agency

(2) The by-laws of an approved agency shall contain the prescribed provisions.

Idem

(3) An approved agency that provides services to Indian or native children and families shall have the prescribed number of band or native community representatives on its board of directors, appointed in the prescribed manner and for the prescribed terms.

Band or  
native  
community  
represent-  
atives

(4) An employee of an approved agency shall not be a member of the agency's board of directors.

Employee  
may  
not sit on  
board

**14.** No approved agency shall place a child in a residential placement except in accordance with this Act and the regulations.

Placements  
must comply  
with Act and  
regulations

#### CHILDREN'S AID SOCIETIES

**15.—**(1) In this section, "prescribed" means prescribed in a regulation made by the Minister under subsection 197 (4) of Part XI (Regulations).

Interpretation

(2) The Minister may designate an approved agency as a children's aid society for a specified territorial jurisdiction and for any or all of the functions set out in subsection (3), may impose terms and conditions on a designation and may vary, remove or amend the terms and conditions or impose new terms and conditions at any time, and may at any time amend a designation to provide that the society is no longer designated for a particular function set out in subsection (3) or to alter the society's territorial jurisdiction.

Designation  
of children's  
aid society

(3) The functions of a children's aid society are to,

Functions of  
society

(a) investigate allegations or evidence that children who are under the age of sixteen years or are in the

society's care or under its supervision may be in need of protection;

- (b) protect, where necessary, children who are under the age of sixteen years or are in the society's care or under its supervision;
- (c) provide guidance, counselling and other services to families for protecting children or for the prevention of circumstances requiring the protection of children;
- (d) provide care for children assigned or committed to its care under this Act;
- (e) supervise children assigned to its supervision under this Act;
- (f) place children for adoption under Part VII; and
- (g) perform any other duties given to it by this or any other Act.

Prescribed standards, etc.

(4) A society shall,

- (a) provide the prescribed standard of services in its performance of its functions; and
- (b) follow the prescribed procedures and practices.

By-laws require approval

(5) A by-law and an amendment to a by-law of a society do not come into force until they are approved by the Minister.

Protection from personal liability

(6) No action shall be instituted against an officer or employee of a society for an act done in good faith in the execution or intended execution of the person's duty or for an alleged neglect or default in the execution in good faith of the person's duty.

Appointment of local director

**16.** Every society shall appoint a local director with the prescribed qualifications, powers and duties.

Duties of Director with respect to societies

**17.—(1)** A Director,

- (a) shall advise and supervise societies;
- (b) shall inspect or direct and supervise the inspection of the operation and records of societies;

- (c) shall exercise the powers and duties of a society in any area in which no society is functioning;
- (d) shall inspect or direct and supervise the inspection of places in which children in the care of societies are placed; and
- (e) shall ensure that societies provide the standard of services and follow the procedures and practices required by subsection 15 (4).

(2) A Director may designate a place as a place of safety, and may designate a class of places as places of safety, for the purposes of Part III (Child Protection).

Director  
may  
designate  
places of  
safety

**18.** The board of directors of a society shall include the prescribed number of municipal representatives, appointed in the prescribed manner and for the prescribed terms.

Municipal  
represent-  
atives

**19.—**(1) In this section and in section 20, “municipality” means the corporation of a county, city, or separated town or a district, metropolitan or regional municipality, but does not include a city or separated town in a district, metropolitan or regional municipality, and in a territorial district means the corporation of a city, town, village or improvement district.

Interpretation

(2) The Minister shall pay to every society out of legislative appropriations an amount determined in accordance with the regulations.

Payments  
by Minister

(3) A municipality shall pay to the society having jurisdiction in the area of that municipality an amount, determined in accordance with the regulations, of the part of the society’s estimated expenditures, as approved by the Minister, that is referable to the municipality.

Payments by  
municipalities

(4) A society’s estimated expenditures shall be determined and shall be approved by the Minister in accordance with the regulations.

How society’s  
estimates  
determined

(5) The part of a society’s estimated expenditures that is referable to a municipality shall be determined in accordance with the regulations.

How  
municipal  
share  
determined

(6) An amount payable to a society under subsection (2) or (3), including advances on expenditures before they are incurred, shall be paid at the times and in the manner determined by the Minister.

Manner of  
payment

Power to  
make levies

**20.**—(1) The council of a municipality shall pass by-laws for the levying of the amounts necessary to meet the liability imposed under subsection 19 (3) and may pass by-laws to afford to a society other assistance that the council considers advisable.

Society  
deemed  
to be a  
local board  
R.S.O. 1980,  
c. 348; 1983,  
c. 8

(2) A society shall be deemed to be a local board of each municipality in which it has jurisdiction for the purposes of the *Ontario Municipal Employees Retirement System Act* and the *Municipal Conflict of Interest Act*, 1983.

#### AGREEMENTS WITH OTHER GOVERNMENTS

Minister may  
make  
agreements  
with other  
governments

**21.** The Minister may, with the approval of the Lieutenant Governor in Council, make agreements on behalf of the Government of Ontario with the Crown in right of Canada and with the Crown in right of any other province of Canada respecting services under this Act or the care or protection of children.

#### REVOCATION AND TAKE-OVER POWERS

Powers of  
Minister

**22.**—(1) Where the Minister believes on reasonable grounds that,

- (a) an approved agency is not providing services in accordance with this Act or the regulations or in accordance with any term or condition imposed on the approval under subsection 8 (1) or 9 (1) or, in the case of a society, on the designation under subsection 15 (2);
- (b) a director, officer or employee of an approved agency has contravened or knowingly permitted any person under his or her control and direction to contravene any provision of this Act or the regulations or any term or condition imposed on the approval under subsection 8 (1) or 9 (1) or, in the case of a society, on the designation under subsection 15 (2);
- (c) approval of the agency under subsection 8 (1) or of the premises under subsection 9 (1) would be refused if it were being applied for in the first instance; or
- (d) in the case of a society, the society is not able to or fails to perform any or all of its functions under section 15, or fails to perform any or all of its functions in any part of its territorial jurisdiction,



the Minister may,

- (e) revoke or suspend the approval; or
- (f) in the case of a society,
  - (i) revoke or suspend the designation under subsection 15 (2),
  - (ii) remove any or all of the members of the board of directors and appoint others in their place, or
  - (iii) operate and manage the society in the place of the board of directors.

(2) Where the Minister proposes to act under clause (1) (e) or (f), the Minister shall serve notice of the proposal and written reasons for it on the approved agency, unless the agency has requested that the Minister so act or has consented to the Minister's proposal.

Notice of  
proposal

(3) A notice under subsection (2) shall inform the agency that it is entitled to a hearing under this section if the agency mails or delivers to the Minister, within sixty days after the notice under subsection (2) is served, a written request for a hearing.

Request for  
hearing

(4) Where the agency does not require a hearing under subsection (3), the Minister may carry out the proposal stated in the Minister's notice under subsection (2) without a hearing.

Where  
agency  
does not  
request  
hearing

(5) Where the agency requires a hearing under subsection (3),

Hearing

- (a) if the Minister proposes to act under clause (1) (e) only, the Minister; and
- (b) in all other cases, the Lieutenant Governor in Council,

shall appoint one or more persons not employed by the Ministry to hear the matter and recommend whether the Minister should carry out the proposal.

(6) Sections 17, 18, 19 and 20 of the *Statutory Powers Procedure Act* do not apply to a hearing under this section.

R.S.O. 1980,  
c. 484,  
ss. 17-20  
do not apply



Report to  
Minister

(7) The person or persons appointed under subsection (5) shall hold a hearing and make a report to the Minister setting out,

- (a) recommendations as to the carrying out of the proposal; and
- (b) the findings of fact, any information or knowledge used in making the recommendations and any conclusions of law arrived at that are relevant to the recommendations,

and shall provide a copy of the report to the agency.

Minister's  
decision

(8) After considering a report made under this section, the Minister may carry out the proposal and shall give notice of the Minister's decision to the agency with reasons.

Provisional  
suspension

(9) Despite subsection (2), the Minister, by notice to the agency and without a hearing, may provisionally exercise any of the powers set out in clauses (1) (e) and (f) where it is necessary to do so, in the Minister's opinion, to avert an immediate threat to the public interest or to a person's health, safety or welfare and the Minister so states in the notice, with reasons, and thereafter the Minister shall cause a hearing to be held and subsections (3) to (8) apply with necessary modifications.

Minister's  
order to  
cease activity

**23.**—(1) Where the Minister is of the opinion, upon reasonable grounds, that an activity carried on, or the manner of carrying on an activity, in the course of the provision of an approved service is causing or is likely to cause harm to a person's health, safety or welfare, the Minister may by order require the service provider to suspend or cease the activity and may take such other action as the Minister deems to be in the best interests of the persons receiving the approved service.

Notice of  
proposal

(2) Where the Minister proposes to make an order requiring the suspension or cessation of an activity under subsection (1), the Minister shall serve notice of the proposal and written reasons for it on the service provider, and subsections 22 (3) to (8), except clause (5) (b), apply with necessary modifications.

Where order  
may be made  
immediately

(3) Despite subsection (2), the Minister, by notice to the service provider and without a hearing, may require that the service provider immediately suspend or cease the activity where the continuation of the activity is, in the Minister's opinion, an immediate threat to the public interest or to a person's health, safety or welfare and the Minister so states in the

notice, with reasons, and thereafter the Minister shall cause a hearing to be held and subsections 22 (3) to (8), except clause (5) (b), apply with necessary modifications.

**24.**—(1) Where the Minister operates and manages a society under subclause 22 (1) (f) (iii), the Minister has all the powers of its board of directors. Minister has powers of board

(2) Without restricting the generality of subsection (1), where the Minister operates and manages a society under subclause 22 (1) (f) (iii), the Minister may, Idem

- (a) carry on the society's business;
- (b) enter into contracts on the society's behalf;
- (c) arrange for bank accounts to be opened in the society's name, and authorize persons to sign cheques and other documents on the society's behalf;
- (d) appoint or dismiss employees of the society; and
- (e) make by-laws.

(3) Without restricting the generality of subsection (1), where the Minister operates and manages a society under subclause 22 (1) (f) (iii), the Minister may, Occupation and operation of premises

- (a) despite sections 25 and 41 of the *Expropriations Act*, immediately occupy and operate, or arrange for the occupation and operation by a person or organization designated by the Minister, of any premises occupied or used by the society for the provision of approved services; or R.S.O. 1980, c. 148
- (b) apply without notice to the District Court for an order directing the sheriff to assist the Minister as may be necessary in occupying the premises.

(4) The Minister shall not occupy and operate premises under subsection (3) for a period exceeding one year without the society's consent, but the Lieutenant Governor in Council may extend the period from time to time. Maximum period

#### OFFENCES

**25.** A person who knowingly, Offence

- (a) fails to furnish a report required by the Minister under subsection 5 (5);

- (b) contravenes subsection 6 (2) or (3) (obstructing program supervisor, etc.); or
- (c) furnishes false information in an application under this Part or in a report or return required under this Part or the regulations,

and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention or furnishing by the corporation, is guilty of an offence and is liable upon conviction to a fine of not more than \$2,000.

## PART II

### VOLUNTARY ACCESS TO SERVICES

#### 26. In this Part,

Interpretation

- (a) “advisory committee” means a Residential Placement Advisory Committee established under subsection 34 (2);
- (b) “institution” means,
  - (i) a children’s residence, other than a maternity home, operated by the Minister or under the authority of a licence issued under Part IX (Licensing) with the capacity of providing residential services to ten or more children at a time, or
  - (ii) premises designated by a Director under subsection 34 (5);
- (c) “record”, when used in reference to a person, has the same meaning as in Part VIII (Confidentiality of and Access to Records);
- (d) “special need” means a need that is related to or caused by a behavioural, developmental, emotional, physical, mental or other handicap.

### CONSENTS

**27.—**(1) A service provider may provide a service to a person who is sixteen years of age or older only with the person’s consent, except where the court orders under this Act that the service be provided to the person.

Consent to service: person over sixteen

(2) A service provider may provide a residential service to a child who is less than sixteen years of age only with the consent of the child’s parent or, where the child is in a society’s lawful custody, the society’s consent, except where this Act provides otherwise.

Consent to residential service: child under sixteen

(3) Subsections (1) and (2) do not apply where a service is provided to a child under Part IV (Young Offenders).

Exception

(4) A child who is placed in a residential placement with the consent referred to in subsection (2) may only be discharged from the placement,

Discharge from residential placement

- (a) with the consent that would be required for a new residential placement; or
- (b) where the placement is made under the authority of an agreement made under subsection 29 (1) (temporary care agreements) or subsection 30 (1) or (2) (special needs agreements), in accordance with section 33 (termination by notice).

Transfer  
to another  
placement

(5) A child who is placed in a residential placement with the consent referred to in subsection (2) shall not be transferred from one placement to another unless the consent that would be required for a new residential placement is given.

Child's  
wishes

(6) Before a child is placed in or discharged from a residential placement or transferred from one residential placement to another with the consent referred to in subsection (2), the service provider shall take the child's wishes into account, if they can be reasonably ascertained.

Counselling  
service:  
child twelve  
or older

**28.** A service provider may provide a counselling service to a child who is twelve years of age or older with the child's consent, and no other person's consent is required, but if the child is less than sixteen years of age the service provider shall discuss with the child at the earliest appropriate opportunity the desirability of involving the child's parent.

#### TEMPORARY CARE AGREEMENTS

Temporary  
care  
agreement

**29.—(1)** A person who is temporarily unable to care adequately for a child in his or her custody, and the society having jurisdiction where the person resides, may make a written agreement for the society's care and custody of the child.

Child's age

(2) No temporary care agreement shall be made in respect of a child,

- (a) who is sixteen years of age or older; or
- (b) who is twelve years of age or older, unless the child is a party to the agreement.

Exception:  
develop-  
mental  
handicap

(3) Clause (2) (b) does not apply where it has been determined on the basis of an assessment, not more than one year before the agreement is made, that the child does not have capacity to participate in the agreement because of a developmental handicap.

Duty of  
society

(4) A society shall not make a temporary care agreement unless the society,



- (a) has determined that an appropriate residential placement that is likely to benefit the child is available; and
- (b) is satisfied that no less restrictive course of action, such as care in the child's own home, is appropriate for the child in the circumstances.

(5) No temporary care agreement shall be made for a term exceeding six months, but the parties to a temporary care agreement may, with a Director's written approval, agree to extend it for a further period or periods if the total term of the agreement, as extended, does not exceed an aggregate of twelve months.

Term  
of agreement  
limited

(6) No temporary care agreement shall be made or extended so as to result in a child being in a society's care and custody, whether under a temporary care agreement or under a temporary order or order for society wardship made under Part III (Child Protection), for a continuous period exceeding twenty-four months.

Twenty-four  
month rule

(7) A temporary care agreement may provide that the society is entitled to consent to medical treatment for the child where a parent's consent would otherwise be required.

Authority  
to consent  
to medical  
treatment  
may be  
transferred

(8) A temporary care agreement shall include:

Contents of  
temporary  
care  
agreement

1. A statement by all the parties to the agreement that the child's care and custody are transferred to the society.
2. A statement by all the parties to the agreement that the child's placement is voluntary.
3. A statement, by the person referred to in subsection (1), that he or she is temporarily unable to care for the child adequately and has discussed with the society alternatives to residential placement of the child.
4. An undertaking by the person referred to in subsection (1) to maintain contact with the child and be involved in the child's care.
5. If it is not possible for the person referred to in subsection (1) to maintain contact with the child and be involved in the child's care, the person's designation of another named person who is willing to do so.

6. The name of the individual who is the primary contact between the society and the person referred to in subsection (1).
7. Such other provisions as are prescribed.

Designation  
by advisory  
committee

(9) Where the person referred to in subsection (1) does not give an undertaking under paragraph 4 or designate another person under paragraph 5 of subsection (8), an advisory committee that has jurisdiction may, in consultation with the society, name a suitable person who is willing to maintain contact with the child and be involved in the child's care.

Variation  
of  
agreement

(10) The parties to a temporary care agreement may vary the agreement from time to time in a manner that is consistent with this Part and the regulations made under it.

#### SPECIAL NEEDS AGREEMENTS

Special  
needs  
agreement  
with society

**30.—**(1) A person who is unable to provide the services required by a child in his or her custody because the child has a special need, and a society having jurisdiction where the person resides, may with a Director's written approval make a written agreement for,

- (a) the society's provision of services to meet the child's special need; and
- (b) the society's supervision or care and custody of the child.

Special  
needs  
agreement  
with  
Minister

(2) A person who is unable to provide the services required by a child in his or her custody because the child has a special need, and the Minister, may make a written agreement for,

- (a) the Minister's provision of services to meet the child's special need; and
- (b) the Minister's supervision or care and custody of the child.

Term  
to be  
specified

(3) A special needs agreement shall only be made for a specific period, but may be extended, with a Director's written approval in the case of an agreement with a society, for a further period or periods.

s. 29 (7-10)  
apply

(4) Where a special needs agreement provides for a child's residential placement, subsections 29 (7), (8), (9) and (10) (authority to consent to medical treatment, contents of agreement, variation) apply with necessary modifications, and sub-

section 29 (4) (duty of society) applies to the society or the Minister, as the case may be, with necessary modifications.

**31.**—(1) A child who is sixteen years of age or older and is not in the care of his or her parent and has a special need, and the society having jurisdiction where the child resides, may with a Director's written approval make a written agreement for the society's provision of services to meet the child's special need.

Society agreements with sixteen and seventeen year olds

(2) A child who is sixteen years of age or older and is not in the care of his or her parent and has a special need, and the Minister, may make a written agreement for the Minister's provision of services to meet the person's special need.

Idem: special needs agreement with Minister

(3) An agreement made under subsection (1) or (2) shall contain the prescribed provisions.

Contents of agreements

(4) Subsection 29 (10) (variation) applies to an agreement made under subsection (1) or (2).

s. 29 (10) applies

EXPIRY AND TERMINATION OF AGREEMENTS

**32.** No agreement made under section 29, 30 or 31 shall continue beyond the eighteenth birthday of the person who is its subject.

Agreement expires at eighteen

**33.**—(1) A party to an agreement made under section 29, 30 or 31 may terminate the agreement at any time by giving every other party written notice that he or she wishes to terminate the agreement.

Notice of termination of agreement

(2) Where notice is given under subsection (1), the agreement terminates on the expiry of five days, or such longer period not exceeding twenty-one days as the agreement specifies, after the day on which every other party has actually received the notice.

When notice takes effect

(3) Where notice of a wish to terminate an agreement for care and custody made under subsection 29 (1) or 30 (1) is given by or to a society under subsection (1), the society shall as soon as possible, and in any event before the agreement terminates under subsection (2),

Return of child, etc., by society

- (a) cause the child to be returned to the person who made the agreement, or to a person who has obtained an order for the child's custody since the agreement was made; or

- (b) where the society is of the opinion that the child would be in need of protection within the meaning of subsection 37 (2) of Part III (Child Protection) if returned to the person referred to in clause (a), bring the child before the court under that Part to determine whether the child would be in need of protection in that case, and thereafter Part III applies to the child, with necessary modifications.

Idem:  
Minister

(4) Where notice of a wish to terminate an agreement for care and custody made under subsection 30 (2) is given by or to the Minister under subsection (1), subsection (3) applies to the Minister, with necessary modifications.

Idem:  
expiry  
of  
agreement

(5) Where a temporary care agreement expires or is about to expire under subsection 29 (6), and where a temporary care agreement or a special needs agreement that provides for care and custody expires or is about to expire according to its own terms and is not extended, the society or the Minister, as the case may be, shall before the agreement expires or as soon as practicable thereafter, but in any event within twenty-one days after the agreement expires,

- (a) cause the child to be returned to the person who made the agreement, or to a person who has obtained an order for the child's custody since the agreement was made; or
- (b) where the society or the Minister, as the case may be, is of the opinion that the child would be in need of protection within the meaning of subsection 37 (2) of Part III (Child Protection) if returned to the person referred to in clause (a), bring the child before the court under that Part to determine whether the child would be in need of protection in that case, and thereafter Part III applies to the child, with necessary modifications.

#### REVIEW BY RESIDENTIAL PLACEMENT ADVISORY COMMITTEE

Interpretation

**34.**—(1) In this section, “residential placement” does not include,

S.C. 1980-  
81-82-83,  
c. 110

- (a) a placement made under the *Young Offenders Act* (Canada) or under Part IV (Young Offenders);
- (b) commitment to a secure treatment program under Part VI (Extraordinary Measures); or



- (c) a placement with a person who is neither a service provider nor a foster parent.

(2) The Minister may establish Residential Placement Advisory Committees each consisting of,

Residential  
Placement  
Advisory  
Committees

- (a) persons engaged in providing services;
- (b) other persons who have demonstrated an informed concern for the welfare of children;
- (c) one representative of the Ministry; and
- (d) if the Minister wishes, another person or persons, including a representative of a band or native community, whom the Minister considers appropriate,

and shall specify the territorial jurisdiction of each advisory committee.

(3) The Minister may pay allowances and reasonable travelling expenses to any or all of the members of an advisory committee, and may authorize an advisory committee to hire support staff.

Payments,  
etc., to  
members

(4) An advisory committee has a duty to advise, inform and assist parents, children and service providers with respect to the availability and appropriateness of residential services and alternatives to residential services, to conduct reviews under this section, and to name persons for the purpose of subsection 29 (9) (contact with child under temporary care agreement), and has such further duties as are prescribed.

Duties of  
committee

(5) A Director may designate a building, group of buildings or part of a building in which residential services can be provided to ten or more children at a time as an institution for the purposes of this section.

Designation  
by Director

(6) An advisory committee shall review,

Mandatory  
review by  
committee

- (a) every residential placement in an institution of a child who resides within the advisory committee's jurisdiction, if the placement is intended to last or actually lasts ninety days or more,
  - (i) as soon as possible, but in any event within forty-five days of the day on which the child is placed in the institution,



- (ii) unless the placement is reviewed under subclause (i), within twelve months of the establishment of the committee or within such longer period as the Minister allows, and
  - (iii) while the placement continues, at least once during each nine month period succeeding the review under subclause (i) or (ii);
- (b) every residential placement of a child twelve years of age or older who objects to the placement and resides within the advisory committee's jurisdiction,
  - (i) within the week immediately following the day that is fourteen days after the child is placed, and
  - (ii) while the placement continues, at least once during each nine month period succeeding the review under subclause (i); and
- (c) an existing or proposed residential placement of a child that the Minister refers to the advisory committee, within thirty days of the referral.

Exception

(7) Subclause (6) (a) (i) does not apply to a residential placement that is made before this Part comes into force.

Discretionary review

(8) An advisory committee may at any time review or re-review, on a person's request or on its own initiative, an existing or proposed residential placement of a child who resides within the advisory committee's jurisdiction.

Review to be informal, etc.

(9) An advisory committee shall conduct a review under this section in an informal manner, in the absence of the public, and in the course of the review may,

- (a) interview the child, members of the child's family and any representatives of the child and family;
- (b) interview persons engaged in providing services and other persons who may have an interest in the matter or may have information that would assist the advisory committee;
- (c) examine documents and reports that are presented to the committee; and
- (d) examine records of the child and of members of the child's family, as defined in Part VIII (Confidential-

ity of and Access to Records), that are disclosed to the committee in accordance with that Part.

(10) At an advisory committee's request, a service provider shall assist and co-operate with the advisory committee in its conduct of a review.

Service providers to assist advisory committee

(11) In conducting a review, an advisory committee shall,

What committee shall consider

- (a) determine whether the child has a special need;
- (b) consider what programs are available for the child in the residential placement or proposed residential placement, and whether a program available to the child is likely to benefit the child;
- (c) consider whether the residential placement or proposed residential placement is appropriate for the child in the circumstances;
- (d) if it considers that a less restrictive alternative to the placement would be more appropriate for the child in the circumstances, specify that alternative;
- (e) consider the importance of continuity in the child's care and the possible effect on the child of disruption of that continuity; and
- (f) where the child is an Indian or native person, consider the importance, in recognition of the uniqueness of Indian and native culture, heritage and traditions, of preserving the child's cultural identity.

**35.—**(1) An advisory committee that conducts a review shall advise,

Recommendations

- (a) the service provider;
- (b) any representative of the child;
- (c) the child's parent or, where the child is in a society's lawful custody, the society;
- (d) the child, where it is reasonable to expect him or her to understand; and
- (e) where the child is an Indian or native person, a representative chosen by the child's band or native community,

of its recommendations as soon as the review has been completed, and shall advise the child of his or her rights under section 36 if the child is twelve years of age or older.

Report of  
review to  
Minister

(2) An advisory committee that conducts a review shall, within thirty days of completing the review, make a report of its findings and recommendations to the Minister.

Recommendation  
for less  
restrictive  
service

(3) Where an advisory committee considers that the provision of a less restrictive service to a child would be more appropriate for the child than the residential placement, the advisory committee shall recommend in its report under subsection (2) that the less restrictive service be provided to the child.

Additional  
reports at  
Minister's  
request

(4) An advisory committee shall make a report of its activities to the Minister whenever the Minister requests it, in addition to making the reports required by subsection (2).

Review by  
Children's  
Services  
Review  
Board

**36.—**(1) A child who is twelve years of age or older and is in a residential placement to which he or she objects may, if the placement has been reviewed by an advisory committee under section 34 and,

- (a) the child is dissatisfied with the advisory committee's recommendation; or
- (b) the advisory committee's recommendation is not followed,

apply to the Board for a determination of where he or she should remain or be placed.

Duty of  
Board

(2) The Board shall conduct a review with respect to an application made under subsection (1) and may do so by holding a hearing.

Idem

(3) The Board shall advise the child whether it intends to hold a hearing or not within ten days of receiving the child's application.

Parties

(4) The parties to a hearing under this section are,

- (a) the child;
- (b) the child's parent or, where the child is in a society's lawful custody, the society;

- (c) where the child is an Indian or native person, a representative chosen by the child's band or native community; and
- (d) any other persons that the Board specifies.

(5) The Board shall complete its review and make a determination within thirty days of receiving a child's application, unless, Time for determination

- (a) the Board holds a hearing with respect to the application; and
- (b) the parties consent to a longer period for the Board's determination.

(6) After conducting a review under subsection (2), the Board may, Board's recommendation

- (a) order that the child be transferred to another residential placement, if the Board is satisfied that the other residential placement is available;
- (b) order that the child be discharged from the residential placement; or
- (c) confirm the existing placement.

## PART III

## CHILD PROTECTION

Interpretation

**37.—(1)** In this Part,

- (a) “child” does not include a child as defined in paragraph 6 of subsection 3 (1) who is actually or apparently sixteen years of age or older, unless the child is the subject of an order under this Part;
- (b) “child protection worker” means a Director, a local director or a person authorized by a Director or local director for the purposes of section 40 (commencing child protection proceedings);
- (c) “extended family”, when used in reference to a child, means the persons to whom the child is related by blood, marriage or adoption;
- (d) “parent”, when used in reference to a child, means each of,
  - (i) the child’s mother,
  - (ii) an individual described in one of paragraphs 1 to 6 of subsection 8 (1) of the *Children’s Law Reform Act*, unless it is proved on a balance of probabilities that he is not the child’s natural father,
  - (iii) the individual having lawful custody of the child,
  - (iv) an individual who, during the twelve months before intervention under this Part, has demonstrated a settled intention to treat the child as a child of his or her family, or has acknowledged parentage of the child and provided for the child’s support,
  - (v) an individual who, under a written agreement or a court order, is required to provide for the child, has custody of the child or has a right of access to the child, and
  - (vi) an individual who has acknowledged parentage of the child in writing under section 12 of the *Children’s Law Reform Act*,

R.S.O. 1980,  
c. 68R.S.O. 1980,  
c. 68



but does not include a foster parent;

- (e) “place of safety” means a foster home, a hospital, and a place or one of a class of places designated as such by a Director under subsection 17 (2) of Part I (Flexible Services), but does not include,

(i) a place of secure custody as defined in Part IV (Young Offenders), or

(ii) a place of secure temporary detention as defined in Part IV.

- (2) A child is in need of protection where,

Child in  
need of  
protection

- (a) the child has suffered physical harm, inflicted by the person having charge of the child or caused by that person’s failure to care and provide for or supervise and protect the child adequately;

- (b) there is a substantial risk that the child will suffer physical harm inflicted or caused as described in clause (a);

- (c) the child has been sexually molested or sexually exploited, by the person having charge of the child or by another person where the person having charge of the child knows or should know of the possibility of sexual molestation or sexual exploitation and fails to protect the child;

- (d) there is a substantial risk that the child will be sexually molested or sexually exploited as described in clause (c);

- (e) the child requires medical treatment to cure, prevent or alleviate physical harm or suffering and the child’s parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, the treatment;

- (f) the child has suffered emotional harm, demonstrated by severe,

(i) anxiety,

(ii) depression,

(iii) withdrawal, or

(iv) self-destructive or aggressive behaviour,

and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, services or treatment to remedy or alleviate the harm;

- (g) there is a substantial risk that the child will suffer emotional harm of the kind described in clause (f), and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, services or treatment to prevent the harm;
- (h) the child suffers from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, treatment to remedy or alleviate the condition;
- (i) the child has been abandoned, the child's parent has died or is unavailable to exercise his or her custodial rights over the child and has not made adequate provision for the child's care and custody, or the child is in a residential placement and the parent refuses or is unable or unwilling to resume the child's care and custody;
- (j) the child is less than twelve years old and has killed or seriously injured another person or caused serious damage to another person's property, services or treatment are necessary to prevent a recurrence and the child's parent or the person having charge of the child does not provide, or refuses or is unavailable or unable to consent to, those services or treatment;
- (k) the child is less than twelve years old and has on more than one occasion injured another person or caused loss or damage to another person's property, with the encouragement of the person having charge of the child or because of that person's failure or inability to supervise the child adequately; or
- (l) the child's parent is unable to care for the child and the child is brought before the court with the parent's consent and, where the child is twelve years of

age or older, with the child's consent, to be dealt with under this Part.

(3) Where a person is directed in this Part to make an order or determination in the best interests of a child, the person shall take into consideration those of the following circumstances of the case that he or she considers relevant:

Best  
interests  
of child

1. The child's physical, mental and emotional needs, and the appropriate care or treatment to meet those needs.
2. The child's physical, mental and emotional level of development.
3. The child's cultural background.
4. The religious faith, if any, in which the child is being raised.
5. The importance for the child's development of a positive relationship with a parent and a secure place as a member of a family.
6. The child's relationships by blood or through an adoption order.
7. The importance of continuity in the child's care and the possible effect on the child of disruption of that continuity.
8. The merits of a plan for the child's care proposed by a society, including a proposal that the child be placed for adoption or adopted, compared with the merits of the child remaining with or returning to a parent.
9. The child's views and wishes, if they can be reasonably ascertained.
10. The effects on the child of delay in the disposition of the case.
11. The risk that the child may suffer harm through being removed from, kept away from, returned to or allowed to remain in the care of a parent.
12. The degree of risk, if any, that justified the finding that the child is in need of protection.

## 13. Any other relevant circumstance.

Where  
child an  
Indian or  
native  
person

(4) Where a person is directed in this Part to make an order or determination in the best interests of a child and the child is an Indian or native person, the person shall take into consideration the importance, in recognition of the uniqueness of Indian and native culture, heritage and traditions, of preserving the child's cultural identity.

## LEGAL REPRESENTATION

Legal  
representation  
of child

**38.**—(1) A child may have legal representation at any stage in a proceeding under this Part.

Court to  
consider  
issue

(2) Where a child does not have legal representation in a proceeding under this Part, the court,

(a) shall, as soon as practicable after the commencement of the proceeding; and

(b) may, at any later stage in the proceeding,

determine whether legal representation is desirable to protect the child's interests.

Direction for  
legal  
representation

(3) Where the court determines that legal representation is desirable to protect a child's interests, the court shall direct that legal representation be provided for the child.

Criteria

(4) Where,

(a) the court is of the opinion that there is a difference of views between the child and a parent or a society, and the society proposes that the child be removed from a person's care or be made a society or Crown ward under paragraph 2 or 3 of subsection 53 (1);

(b) the child is in the society's care and,

(i) no parent appears before the court, or

(ii) it is alleged that the child is in need of protection within the meaning of clause 37 (2) (a), (c), (f) or (h); or

(c) the child is not permitted to be present at the hearing,

legal representation shall be deemed to be desirable to protect the child's interests, unless the court is satisfied, taking into account the child's views and wishes if they can be reasonably ascertained, that the child's interests are otherwise adequately protected.

(5) Where a child's parent is less than eighteen years of age, the Official Guardian shall represent the parent in a proceeding under this Part unless the court orders otherwise. Where parent a minor

#### PARTIES AND NOTICE

**39.—**(1) The following are parties to a proceeding under this Part: Parties

1. The applicant.
2. The society having jurisdiction in the matter.
3. The child's parent.
4. Where the child is an Indian or a native person, a representative chosen by the child's band or native community.

(2) At any stage in a proceeding under this Part, the court shall add a Director as a party on his or her application. Director to be added

(3) Any person, including a foster parent, who has cared for the child continuously during the six months immediately before the hearing, Right to participate

- (a) is entitled to the same notice of the proceeding as a party;
- (b) may be present at the hearing;
- (c) may be represented by a solicitor; and
- (d) may make submissions to the court,

but shall take no further part in the hearing without leave of the court.

(4) A child twelve years of age or more who is the subject of a proceeding under this Part is entitled to receive notice of the proceeding and to be present at the hearing, unless the court is satisfied that being present at the hearing would cause the child emotional harm and orders that the child not receive Child twelve or older



notice of the proceeding and not be permitted to be present at the hearing.

Child  
under twelve

(5) A child less than twelve years of age who is the subject of a proceeding under this Part is not entitled to receive notice of the proceeding or to be present at the hearing unless the court is satisfied that the child,

(a) is capable of understanding the hearing; and

(b) will not suffer emotional harm by being present at the hearing,

and orders that the child receive notice of the proceeding and be permitted to be present at the hearing.

Child's  
participation

(6) A child who is the applicant under subsection 60 (4) (status review), receives notice of a proceeding under this Part or has legal representation in a proceeding is entitled to participate in the proceeding and to appeal under section 65 as if he or she were a party.

Dispensing  
with notice

(7) Where the court is satisfied that the time required for notice to a person might endanger the child's health or safety, the court may dispense with notice to that person.

#### COMMENCING CHILD PROTECTION PROCEEDINGS

Application

**40.—**(1) A society may apply to the court to determine whether a child is in need of protection.

Warrant to  
apprehend  
child

(2) A justice of the peace who is satisfied on the basis of a child protection worker's sworn information that,

(a) there are reasonable and probable grounds to believe that a child is in need of protection; or

(b) a child actually or apparently under the age of sixteen years has left or been removed from a society's lawful care and custody without its consent,

may, where he or she is also satisfied on the basis of the information that there are reasonable and probable grounds to believe that a less restrictive course of action is not available or will not protect the child adequately, issue a warrant authorizing a child protection worker to bring the child to a place of safety.

(3) Where the court is satisfied, on a person's application upon notice to a society, that there are reasonable and probable grounds to believe that,

Order to produce or apprehend child

- (a) a child is in need of protection, the matter has been reported to the society, the society has not made an application under subsection (1), and no child protection worker has sought a warrant under subsection (2) or apprehended the child under subsection (6); and
- (b) the child cannot be protected adequately otherwise than by being brought before the court,

the court may order,

- (c) that the person having charge of the child produce him or her before the court at the time and place named in the order for a hearing under subsection 43 (1) to determine whether he or she is in need of protection; or
- (d) where the court is satisfied that an order under clause (c) would not protect the child adequately, that a child protection worker employed by the society bring the child to a place of safety.

(4) It is not necessary, in an application under subsection (1), a warrant under subsection (2) or an order made under subsection (3), to describe the child by name.

Child's name not required

(5) A child protection worker authorized to bring a child to a place of safety by a warrant issued under subsection (2) or an order made under clause (3) (d) may at any time enter the premises specified in the warrant or order, by force if necessary, and may search for and remove the child.

Authority to enter, etc.

(6) A child protection worker who believes on reasonable and probable grounds that,

Apprehension without warrant

- (a) a child,
  - (i) is in need of protection, or
  - (ii) is actually or apparently under the age of sixteen years and has left or been removed from a society's lawful care and custody without its consent; and

- (b) there would be a substantial risk to the child's health or safety during the time necessary to bring the matter on for a hearing under subsection 43 (1) or obtain a warrant under subsection (2),

may without a warrant bring the child to a place of safety.

Police assistance

(7) A child protection worker acting under this section may call for the assistance of a peace officer.

Consent to examine child

(8) A child protection worker acting under subsection (6) or under a warrant issued under subsection (2) or an order made under clause (3) (d) may authorize the child's medical examination where a parent's consent would otherwise be required.

Place of open temporary detention

(9) Where a child protection worker who brings a child to a place of safety under this section believes on reasonable and probable grounds that no less restrictive course of action is feasible, the child may be detained in a place of safety that is a place of open temporary detention as defined in Part IV (Young Offenders).

Apprehension of child under twelve

(10) A peace officer who believes on reasonable and probable grounds that a child actually or apparently under twelve years of age has committed an act in respect of which a person twelve years of age or older could be found guilty of an offence may apprehend the child without a warrant and shall, on doing so,

- (a) as soon as practicable, return the child to the child's parent or other person having charge of the child; or
- (b) where it is not possible to return the child to the parent or other person within a reasonable time, take the child to a place of safety to be detained there until the child can be returned to the parent or other person.

Notice to parent, etc.

(11) The person in charge of a place of safety in which a child is detained under subsection (10) shall make reasonable efforts to notify the child's parent or other person having charge of the child of the child's detention so that the child may be returned to the parent or other person.

Where child not returned to parent, etc., within twelve hours

(12) Where a child detained in a place of safety under subsection (10) cannot be returned to the child's parent or other person having charge of the child within twelve hours of being taken to the place of safety, the child shall be deemed to have

been apprehended under subclause (6) (a) (i) as being apparently in need of protection.

(13) Where a child is detained under this Part in a place of safety that has been designated as a place of open temporary detention as defined in Part IV (Young Offenders) and leaves the place without the consent of,

Apprehension of child absent from place of open temporary detention

- (a) the society having care, custody and control of the child; or
- (b) the person in charge of the place of safety,

a peace officer, the person in charge of the place of safety or that person's delegate may apprehend the child without a warrant and,

- (c) take the child to a place of safety to be detained until he or she can be returned;
- (d) arrange for the child to be returned; or
- (e) return the child,

to the first-mentioned place of safety.

(14) Where a person authorized under subsection (6), (10) or (13) believes on reasonable and probable grounds that a child referred to in the relevant subsection is on any premises, the person may without a warrant enter the premises, by force, if necessary, and search for and remove the child.

Right of entry, etc.

(15) A person authorized to enter premises under subsection (5) or (14) shall exercise the power of entry in accordance with the regulations.

Regulations re power of entry

(16) No action shall be instituted against a child protection worker or peace officer for any act done in accordance with this section, unless the act is done maliciously or without reasonable grounds.

Protection from personal liability

(17) A peace officer has the powers of a child protection worker for the purpose of this section.

Peace officer has powers of child protection worker

#### HEARINGS AND ORDERS

**41.—(1)** In this section, “media” means the press, radio and television media.

Interpretation



Application

(2) This section applies to hearings held under this Part, except hearings under section 72 (child abuse register).

Hearings  
separate  
from  
criminal  
proceedings

(3) A hearing shall be held separately from hearings in criminal proceedings.

Hearings  
private  
unless court  
orders  
otherwise

(4) A hearing shall be held in the absence of the public, subject to subsection (5), unless the court, after considering,

- (a) the wishes and interests of the parties; and
- (b) whether the presence of the public would cause emotional harm to a child who is a witness at or a participant in the hearing or is the subject of the proceeding,

orders that the hearing be held in public.

Media  
representa-  
tives

(5) Media representatives chosen in accordance with subsection (6) may be present at a hearing that is held in the absence of the public, unless the court makes an order excluding them under subsection (7).

Idem

(6) The media representatives who may be present at a hearing that is held in the absence of the public shall be chosen as follows:

- 1. The media representatives in attendance shall choose not more than two persons from among themselves.
- 2. Where the media representatives in attendance are unable to agree on a choice of persons, the court may choose not more than two media representatives who may be present at the hearing.
- 3. The court may permit additional media representatives to be present at the hearing.

Order  
excluding  
media repre-  
sentatives or  
prohibiting  
publication

(7) The court may make an order,

- (a) excluding a particular media representative from all or part of a hearing;
- (b) excluding all media representatives from all or a part of a hearing; or



- (c) prohibiting the publication of a report of the hearing or a specified part of the hearing,

where the court is of the opinion that the presence of the media representative or representatives or the publication of the report, as the case may be, would cause emotional harm to a child who is a witness at or a participant in the hearing or is the subject of the proceeding.

(8) No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding, or the child's parent or foster parent or a member of the child's family.

Prohibition:  
identifying  
child

(9) The court may make an order prohibiting the publication of information that has the effect of identifying a person charged with an offence under this Part.

Idem:  
order re  
adult

(10) No person except a party or a party's solicitor shall be given a copy of a transcript of the hearing, unless the court orders otherwise.

Transcript

**42.**—(1) As soon as practicable, but in any event within five days after a child is brought to a place of safety under section 40 or subsection 75 (6) or a homemaker remains or is placed on premises under subsection 74 (2),

Time of  
detention  
limited

- (a) the matter shall be brought before a court for a hearing under subsection 43 (1) (child protection hearing);
- (b) the child shall be returned to the person who last had charge of the child or, where there is an order for the child's custody that is enforceable in Ontario, to the person entitled to custody under the order; or
- (c) a temporary care agreement shall be made under subsection 29 (1) of Part II (Voluntary Access to Services).

(2) Within twenty-four hours after a child is brought to a place of safety that is a place of open temporary detention, or as soon thereafter as is practicable, the matter shall be brought before a court for a hearing under subsection 43 (1) (child protection hearing), and the court shall,

Idem:  
place of  
open  
temporary  
detention

- (a) where it is satisfied that no less restrictive course of action is feasible, order that the child remain in the

place of open temporary detention for a period or periods not exceeding an aggregate of thirty days and then be returned to the care and custody of the society;

- (b) order that the child be discharged from the place of open temporary detention and returned to the care and custody of the society; or
- (c) make an order under subsection 47 (2) (temporary care and custody).

Child  
protection  
hearing

**43.**—(1) Where an application is made under subsection 40 (1) to determine whether the child is in need of protection, the court shall hold a hearing to determine the issue and make an order under section 53.

Child's  
name, age,  
etc.

(2) As soon as practicable, and in any event before determining whether a child is in need of protection, the court shall determine,

- (a) the child's name and age;
- (b) the religious faith, if any, in which the child is being raised;
- (c) whether the child is an Indian or a native person and, if so, the child's band or native community; and
- (d) where the child was brought to a place of safety before the hearing, the location of the place from which the child was removed.

Where  
sixteenth  
birthday  
intervenes

(3) Despite anything else in this Part, where the child was under the age of sixteen years when the proceeding was commenced or when the child was apprehended, the court may hear and determine the matter and make an order under this Part as if the child were still under the age of sixteen years.

Territorial  
jurisdiction  
defined

**44.**—(1) In this section, "territorial jurisdiction" means a society's territorial jurisdiction under subsection 15 (2).

Place of  
hearing

(2) A hearing under this Part with respect to a child shall be held in the territorial jurisdiction in which the child ordinarily resides, except that,

- (a) where the child is brought to a place of safety before the hearing, the hearing shall be held in the

territorial jurisdiction in which the place from which the child was removed is located;

- (b) where the child is in a society's care under an order for society or Crown wardship under section 53, the hearing shall be held in the society's territorial jurisdiction; and
- (c) where the child is the subject of an order for society supervision under section 53, the hearing may be held in the society's territorial jurisdiction or in the territorial jurisdiction in which the parent or other person with whom the child is placed resides.

(3) Where the court is satisfied at any stage of a proceeding under this Part that there is a preponderance of convenience in favour of conducting it in another territorial jurisdiction, the court may order that the proceeding be transferred to that other territorial jurisdiction and be continued as if it had been commenced there.

Transfer of proceeding

(4) The court shall not make an order placing a child in the care or under the supervision of a society unless the place where the court sits is within the society's territorial jurisdiction.

Orders affecting society

**45.** The court may, on its own initiative, summon a person to attend before it, testify and produce any document or thing, and may enforce obedience to the summons as if it had been issued under the *Family Law Reform Act*.

Power of court

R.S.O. 1980, c. 152

**46.**—(1) Despite anything in the *Evidence Act*, before ordering that a child be placed in or returned to the care and custody of a person other than a society, the court may consider that person's past conduct toward any child that is or has been in his or her care, and any oral or written statement or report that the court considers relevant, including a transcript, exhibit or finding in an earlier civil or criminal proceeding, may be admitted into evidence and shall be proved as the court directs.

Evidence at hearing: past conduct toward children

R.S.O. 1980, c. 145

(2) In a hearing under subsection 43 (1), evidence relating only to the disposition of the matter shall not be admitted before the court has determined that the child is in need of protection.

Idem: order of presentation

**47.**—(1) The court shall not adjourn a hearing for more than thirty days,

Adjournments

- (a) unless all the parties present and the person who will be caring for the child during the adjournment consent; or
- (b) if the court is aware that a party who is not present at the hearing objects to the longer adjournment.

Custody  
during  
adjournment

(2) Where a hearing is adjourned, the court shall make a temporary order for care and custody providing that the child,

- (a) remain in or be returned to the care and custody of the person who had charge of the child immediately before intervention under this Part;
- (b) remain in or be returned to the care and custody of the person referred to in clause (a), subject to the society's supervision and on such reasonable terms and conditions relating to the child's supervision as the court considers appropriate;
- (c) be placed in the care and custody of a person other than the person referred to in clause (a), with the consent of that other person, subject to the society's supervision and on such reasonable terms and conditions relating to the child's supervision as the court considers appropriate; or
- (d) remain or be placed in the care and custody of the society, but not be placed in,
  - (i) a place of secure custody as defined in Part IV (Young Offenders), or
  - (ii) a place of open temporary detention as defined in that Part that has not been designated as a place of safety.

Criteria

(3) The court shall not make an order under clause (2) (c) or (d) unless the court is satisfied that there are reasonable and probable grounds to believe that there is a substantial risk to the child's health or safety and that the child can not be protected adequately by an order under clause (2) (a) or (b).

Application  
of s. 58

(4) Where the court makes an order under clause (2) (d), section 58 (parental consents) applies with necessary modifications.

Access

(5) An order made under clause (2) (c) or (d) may contain provisions regarding any person's right of access to the child



on such terms and conditions as the court considers appropriate.

(6) The court may at any time vary or terminate an order made under subsection (2). Power to vary

(7) For the purpose of this section, the court may admit and act on evidence that the court considers credible and trustworthy in the circumstances. Evidence on adjournments

**48.** Where an application is made under subsection 40 (1) to determine whether a child is in need of protection and the determination has not been made within three months after the commencement of the proceeding, the court, Delay: court to fix date

- (a) shall by order fix a date for the hearing of the application, and the date may be the earliest date that is compatible with the just disposition of the application; and
- (b) may give such directions and make such orders with respect to the proceeding as are just.

**49.—**(1) Where the court makes an order under this Part, the court shall give, Reasons, etc.

- (a) a statement of any terms or conditions imposed on the order;
- (b) a statement of every plan for the child's care proposed to the court;
- (c) a statement of the plan for the child's care that the court is applying in its decision; and
- (d) reasons for its decision, including,
  - (i) a brief statement of the evidence on which the court bases its decision, and
  - (ii) where the order has the effect of removing or keeping the child from the care of the person who had charge of the child immediately before intervention under this Part, a statement of the reasons why the child cannot be adequately protected while in the person's care.



Idem

(2) Clause (1) (b) does not require the court to identify a person with whom or a place where it is proposed that a child be placed for care and supervision.

## ASSESSMENTS

Order for  
assessment

**50.**—(1) Where a child has been found to be in need of protection, the court may order that within a specified time,

- (a) the child; or
- (b) a parent or a person, except a foster parent, in whose charge the child has been or may be,

attend before and undergo an assessment by a specified person who is qualified, in the court's opinion, to perform medical, emotional, developmental, psychological, educational or social assessments and has consented to perform the assessment.

Report

(2) The person performing an assessment under subsection (1) shall make a written report of the assessment to the court within the time specified in the order, which shall not be more than thirty days unless the court is of the opinion that a longer assessment period is necessary.

Copies of  
report

(3) At least seven days before the court considers the report at a hearing, the court or, where the assessment was requested by a party, that party, shall provide a copy of the report to,

- (a) the person assessed, subject to subsections (4) and (5);
- (b) the child's solicitor or agent of record;
- (c) a parent appearing at the hearing, or the parent's solicitor of record;
- (d) the society caring for or supervising the child;
- (e) a Director, where he or she requests a copy;
- (f) where the child is an Indian or a native person, a representative chosen by the child's band or native community; and
- (g) any other person who, in the opinion of the court, should receive a copy of the report for the purposes of the case.

(4) Where the person assessed is a child less than twelve years of age, the child shall not receive a copy of the report unless the court considers it desirable that the child receive a copy of the report.

Child under twelve

(5) Where the person assessed is a child twelve years of age or more, the child shall receive a copy of the report, except that where the court is satisfied that disclosure of all or part of the report to the child would cause the child emotional harm, the court may withhold all or part of the report from the child.

Child twelve or older

(6) The report of an assessment ordered under subsection (1) is evidence and is part of the court record of the proceeding.

Assessment is evidence

(7) The court may draw any inference it considers reasonable from a person's refusal to undergo an assessment ordered under subsection (1).

Inference from refusal

(8) The report of an assessment ordered under subsection (1) is not admissible into evidence in any other proceeding except,

Report inadmissible: exceptions

- (a) an appeal in the proceeding under section 65;
- (b) a proceeding under the *Coroners Act*; or
- (c) a proceeding referred to in section 77 (recovery on child's behalf),

R.S.O. 1980, c. 93

without the consent of the person or persons assessed.

**51.** Where a child is brought before the court on consent as described in clause 37 (2) (1), the court shall, before making an order under section 53 that would remove the child from the parent's care and custody,

Consent order: special requirements

- (a) ask whether,
  - (i) the society has offered the parent and child services that would enable the child to remain with the parent, and
  - (ii) the parent and, where the child is twelve years of age or older, the child has consulted independent legal counsel in connection with the consent; and

- (b) be satisfied that,

- (i) the parent and, where the child is twelve years of age or older, the child understands the nature and consequences of the consent,
- (ii) every consent is voluntary, and
- (iii) the parent and, where the child is twelve years of age or older, the child consents to the order being sought.

Society's  
plan for  
child

**52.** The court shall, before making an order under section 53 or 61, obtain and consider a plan for the child's care prepared in writing by the society and including,

- (a) a description of the services to be provided to remedy the condition or situation on the basis of which the child was found to be in need of protection;
- (b) a statement of the criteria by which the society will determine when its wardship or supervision is no longer required;
- (c) an estimate of the time required to achieve the purpose of the society's intervention;
- (d) where the society proposes to remove or has removed the child from a person's care,
  - (i) an explanation of why the child cannot be adequately protected while in the person's care, and a description of any past efforts to do so, and
  - (ii) a statement of what efforts, if any, are planned to maintain the child's contact with the person; and
- (e) where the society proposes to remove or has removed the child from a person's care permanently, a description of the arrangements made or being made for the child's long-term stable placement.

Order where  
child in need  
of protection

**53.—**(1) Where the court finds that a child is in need of protection and is satisfied that intervention through a court order is necessary to protect the child in the future, the court shall make one of the following orders, in the child's best interests:

Supervision  
order

1. That the child be placed with or returned to a parent or another person, subject to the supervision of

the society, for a specified period of at least three and not more than twelve months.

2. That the child be made a ward of the society and be placed in its care and custody for a specified period not exceeding twelve months. Society  
wardship
3. That the child be made a ward of the Crown, until the wardship is terminated under section 61 or expires under subsection 67 (1), and be placed in the care of the society. Crown  
wardship
4. That the child be made a ward of the society under paragraph 2 for a specified period and then be returned to a parent or another person under paragraph 1, for a period or periods not exceeding an aggregate of twelve months. Consecutive  
orders of  
society  
wardship and  
supervision

(2) In determining which order to make under subsection (1), the court shall ask the parties what efforts the society or another agency or person made to assist the child before intervention under this Part. Court to  
inquire

(3) The court shall not make an order removing the child from the care of the person who had charge of him or her immediately before intervention under this Part unless the court is satisfied that less restrictive alternatives, including non-residential services and the assistance referred to in subsection (2), Less  
restrictive  
alternatives  
preferred

- (a) have been attempted and have failed;
- (b) have been refused by the person having charge of the child; or
- (c) would be inadequate to protect the child.

(4) Where the court decides that it is necessary to remove the child from the care of the person who had charge of him or her immediately before intervention under this Part, the court shall, before making an order for society or Crown wardship under paragraph 2 or 3 of subsection (1), consider whether it is possible to place the child with a relative, neighbour or other member of the child's community or extended family under paragraph 1 of subsection (1) with the consent of the relative or other person. Community  
placement  
to be  
considered

(5) Where the child referred to in subsection (4) is an Indian or a native person, unless there is a substantial reason Idem:  
where child  
an Indian or  
a native  
person



for placing the child elsewhere, the court shall place the child with,

- (a) a member of the child's extended family;
- (b) a member of the child's band or native community;  
or
- (c) another Indian or native family.

Crown  
wardship  
order  
restricted

(6) The court shall not make an order for Crown wardship under paragraph 3 of subsection (1) unless the court is satisfied that the circumstances justifying the order are unlikely to change within a reasonably foreseeable time not exceeding twenty-four months so that the child can be returned to the care of the person who had charge of him or her immediately before intervention under this Part.

Idem

(7) When the court has dispensed with notice to a person under subsection 39 (7), the court shall not make an order for Crown wardship under paragraph 3 of subsection (1), or an order for society wardship under paragraph 2 of subsection (1) for a period exceeding thirty days, until a further hearing under subsection 43 (1) has been held upon notice to that person.

Terms and  
conditions of  
supervision  
order

(8) Where the court makes a supervision order under paragraph 1 of subsection (1), the court may impose reasonable terms and conditions relating to the child's care and supervision on,

- (a) the person with whom the child is placed or to whom the child is returned;
- (b) the supervising society;
- (c) the child; and
- (d) any other person who participated in the hearing.

Where no  
court order  
necessary

(9) Where the court finds that a child is in need of protection but is not satisfied that a court order is necessary to protect the child in the future, the court shall order that the child remain with or be returned to the person who had charge of the child immediately before intervention under this Part.

#### ACCESS

Access order

**54.—**(1) The court may, in the child's best interests,



- (a) when making an order under this Part; or
- (b) upon an application under subsection (2),

make, vary or terminate an order respecting a person's access to the child or the child's access to a person, and may impose such terms and conditions on the order as the court considers appropriate.

(2) Where a child is in a society's care and custody or supervision, Who may apply

- (a) the child;
- (b) any other person, including, where the child is an Indian or a native person, a representative chosen by the child's band or native community; or
- (c) the society,

may apply to the court at any time for an order under subsection (1).

(3) An applicant referred to in clause (2) (b) shall give notice of the application to the society. Notice

(4) A society making or receiving an application under subsection (2) shall give notice of the application to, Idem

- (a) the child, subject to subsections 39 (4) and (5) (notice to child);
- (b) the child's parent;
- (c) the person caring for the child at the time of the application; and
- (d) where the child is an Indian or a native person, a representative chosen by the child's band or native community.

(5) No order respecting access to a person sixteen years of age or more shall be made under subsection (1) without the person's consent. Child over sixteen

(6) No application shall be made under subsection (2) by a person other than a society within six months of, Six month period

- (a) the making of an order under section 53;

- (b) the disposition of a previous application by the same person under subsection (2);
- (c) the disposition of an application under section 60 (review); or
- (d) the final disposition or abandonment of an appeal from an order referred to in clause (a), (b) or (c),

whichever is later.

No  
application  
where child  
placed for  
adoption

(7) No person or society shall make an application under subsection (2) where the child,

- (a) is a Crown ward;
- (b) has been placed in a person's home by the society or by a Director for the purpose of adoption under Part VII (Adoption); and
- (c) still resides in that person's home.

Access:  
where child  
removed  
from person  
in charge

**55.**—(1) Where an order is made under paragraph 1 or 2 of subsection 53 (1) removing a child from the person who had charge of the child immediately before intervention under this Part, the court shall make an order for access by the person unless the court is satisfied that continued contact with him or her would not be in the child's best interests.

Idem:  
Crown ward

(2) Where a child is made a Crown ward under paragraph 3 of subsection 53 (1), the court shall not make an order for access by the person who had charge of the child immediately before intervention under this Part unless the court is satisfied that,

- (a) permanent placement in a family setting has not been planned or is not possible, and the person's access will not impair the child's future opportunities for such placement;
- (b) the child is at least twelve years of age and wishes to maintain contact with the person;
- (c) the child has been or will be placed with a person who does not wish to adopt the child; or
- (d) some other special circumstance justifies making an order for access.

(3) The court shall not terminate an order for access to a Crown ward unless the court is satisfied that the circumstances that justified the making of the order under subsection (2) no longer exist.

Termination  
of access to  
Crown ward

#### PAYMENT ORDERS

**56.—**(1) Where the court places a child in the care of,

Order for  
payment by  
parent

(a) a society; or

(b) a person other than the child's parent, subject to a society's supervision,

the court may order a parent or a parent's estate to pay the society a specified amount at specified intervals for each day the child is in the society's care or supervision.

(2) In making an order under subsection (1), the court shall consider those of the following circumstances of the case that the court considers relevant:

Criteria

1. The assets and means of the child and of the parent or the parent's estate.
2. The child's capacity to provide for his or her own support.
3. The capacity of the parent or the parent's estate to provide support.
4. The child's and the parent's age and physical and mental health.
5. The child's mental, emotional and physical needs.
6. Any legal obligation of the parent or the parent's estate to provide support for another person.
7. The child's aptitude for and reasonable prospects of obtaining an education.
8. Any legal right of the child to support from another source, other than out of public moneys.

(3) No order made under subsection (1) shall extend beyond the day on which the child attains the age of eighteen years.

Order ends  
at eighteen

Power to  
vary

(4) The court may vary, suspend or terminate an order made under subsection (1) where the court is satisfied that the circumstances of the child or parent have changed.

Collection by  
municipality

(5) The council of a municipality may enter into an agreement with the board of directors of a society providing for the collection by the municipality, on the society's behalf, of the amounts ordered to be paid by a parent under subsection (1).

Enforcement  
R.S.O. 1980,  
c. 152

(6) An order made against a parent under subsection (1) may be enforced under sections 27 to 32 of the *Family Law Reform Act* as if it were an order for support.

#### SOCIETY AND CROWN WARDSHIP

Application

**57.—**(1) This section applies where a child is made a society or Crown ward under paragraph 2 or 3 of subsection 53 (1).

Placement

(2) The society having care of a child shall choose a residential placement for the child that,

- (a) represents the least restrictive alternative for the child;
- (b) where possible, respects the religious faith, if any, in which the child is being raised;
- (c) where possible, respects the child's linguistic and cultural heritage;
- (d) where the child is an Indian or a native person, is with a member of the child's extended family, a member of the child's band or native community or another Indian or native family, if possible; and
- (e) takes into account the child's wishes, if they can be reasonably ascertained, and the wishes of any parent who is entitled to access to the child.

Education

(3) The society having care of a child shall ensure that the child receives an education that corresponds to his or her aptitudes and abilities.

Placement  
outside or  
removal  
from Ontario

(4) The society having care of a child shall not place the child outside Ontario or permit a person to remove the child from Ontario permanently unless a Director is satisfied that extraordinary circumstances justify the placement or removal.

Rights of  
child, parent  
and foster  
parent

(5) The society having care of a child shall ensure that,



- (a) the child is afforded all the rights referred to in Part V (Rights of Children); and
- (b) the wishes of any parent who is entitled to access to the child and, where the child is a Crown ward, of any foster parent with whom the child has lived continuously for two years are taken into account in the society's major decisions concerning the child.

(6) The society having care of a child may remove the child from a foster home or other residential placement where, in the opinion of a Director or local director, it is in the child's best interests to do so.

Change of placement

(7) Where a child is a Crown ward and has lived with a foster parent continuously for two years, the society shall not remove the child under subsection (6) without first giving the foster parent ten days notice of the proposed removal and of his or her right to a review under section 64.

Rights of foster parents in certain cases

(8) Where a foster parent requests a review under section 64 within ten days of receiving a notice under subsection (7), the society shall not remove the child until the review and any further review by a Director have been completed and unless the society's board of directors or the Director, as the case may be, recommend that the child be removed.

Time for review

(9) Subsections (7) and (8) do not apply where, in the opinion of a Director or local director, there would be a substantial risk to the child's health or safety during the time necessary for notice to the foster parent and a review under section 64.

Exception where child at risk

(10) Sections 34, 35 and 36 (review by Residential Placement Advisory Committee, further review by Children's Services Review Board) of Part II (Voluntary Access to Services) apply to a residential placement made by a society.

Review of certain placements

**58.**—(1) Where a child is made a society ward under paragraph 2 of subsection 53 (1), the society may consent to and authorize medical treatment for the child where a parent's consent would otherwise be required, unless the court orders that the parent shall retain any right that he or she may have to give or refuse consent to medical treatment for the child.

Society ward: consent to medical treatment

(2) The court shall not make an order under subsection (1) where failure to consent to necessary medical treatment was a ground for finding that the child was in need of protection.

Idem



Court order

(3) Where a parent referred to in an order made under subsection (1) refuses or is unavailable or unable to consent to medical treatment for the child and the court is satisfied that the treatment would be in the child's best interests, the court may authorize the society to consent to the treatment.

Consent to  
child's  
marriage  
R.S.O. 1980,  
c. 256

(4) Where a child is made a society ward under paragraph 2 of subsection 53 (1), the child's parent retains any right that he or she may have under the *Marriage Act* to give or refuse consent to the child's marriage.

Crown  
custodian  
of Crown  
wards

**59.**—(1) Where a child is made a Crown ward under paragraph 3 of subsection 53 (1), the Crown has the rights and responsibilities of a parent for the purpose of the child's care, custody and control and has the right to give or refuse consent to medical treatment for the child where a parent's consent would otherwise be required, and the Crown's powers, duties and obligations in respect of the child, except those assigned to a Director by this Act or the regulations, shall be exercised and performed by the society caring for the child.

Society  
custodian of  
society wards

(2) Where a child is made a society ward under paragraph 2 of subsection 53 (1), the society has the rights and responsibilities of a parent for the purpose of the child's care, custody and control.

#### REVIEW

Application

**60.**—(1) This section applies where a child is the subject of an order for society supervision, society wardship or Crown wardship under subsection 53 (1).

Society to  
seek status  
review

(2) The society having care, custody or supervision of a child,

- (a) may apply to the court at any time, subject to subsection (9);
- (b) where the order is for society supervision or society wardship, shall apply to the court before the expiry of the order, except under subsection 67 (1) (age of eighteen); and
- (c) where the society has removed the child from the care of a person with whom the child was placed under an order for society supervision, shall apply to the court within five days of the child's removal,

for review of the child's status.

(3) Where a child is the subject of an order for society supervision under subsection 53 (1), clauses (2) (a) and (c) also apply to the society that has jurisdiction in the county or district in which the parent or other person with whom the child is placed resides.

Application  
of  
subs. (2)  
(a, c)

(4) An application for review of a child's status may be made on notice to the society by,

Others may  
seek status  
review

- (a) the child, where the child is at least twelve years of age;
- (b) any parent of the child, subject to subsection (5);
- (c) the person with whom the child was placed under an order for society supervision; or
- (d) where the child is an Indian or a native person, a representative chosen by the child's band or native community.

(5) Where the child is a Crown ward and has lived with the same foster parent continuously during the two years immediately before the application, an application under subsection (4) shall not be made by any parent of the child without the court's leave.

Leave  
required  
in certain  
cases

(6) A society making an application under subsection (2) or receiving notice of an application under subsection (4) shall give notice of the application to,

Notice

- (a) the child, subject to subsections 39 (4) and (5) (notice to child);
- (b) the child's parent, unless the child is a Crown ward and is sixteen years of age or older;
- (c) the person with whom the child was placed under an order for society supervision;
- (d) a foster parent who has cared for the child continuously during the six months immediately before the application;
- (e) where the child is an Indian or a native person, a representative chosen by the child's band or native community; and
- (f) a Director, if the child is a Crown ward.

Six month  
period

(7) No application shall be made under subsection (4) within six months of,

- (a) the making of the original order under subsection 53 (1);
- (b) the disposition of a previous application by any person under subsection (4); or
- (c) the final disposition or abandonment of an appeal from an order referred to in clause (a) or (b),

whichever is the latest.

Exception

(8) Subsection (7) does not apply where,

- (a) the child is a society ward or the subject of an order for society supervision, or the child is a Crown ward and an order for access has been made under subsection 55 (2); and
- (b) the court is satisfied that a major element of the plan for the child's care that the court applied in its decision is not being carried out.

No review  
where child  
placed for  
adoption

(9) No person or society shall make an application under this section where the child,

- (a) is a Crown ward;
- (b) has been placed in a person's home by the society or by a Director for the purpose of adoption under Part VII; and
- (c) still resides in that person's home.

Interim care  
and custody

(10) Where an application is made under this section, the child shall remain in the care and custody of the person or society having charge of the child, until the application is disposed of, unless the court is satisfied that the child's best interests require a change in the child's care and custody.

Court may  
vary, etc.

**61.**—(1) Where an application for review of a child's status is made under section 60, the court may, in the child's best interests,

- (a) vary or terminate the original order made under subsection 53 (1), including a term or condition or a provision for access that is part of the order;

- (b) order that the original order terminate on a specified future date; or
- (c) make a further order or orders under section 53.

(2) Where a child has been made a Crown ward under paragraph 3 of subsection 53 (1), the court shall not make an order for society wardship under subsection (1). Restriction

(3) Before making an order under subsection (1), the court shall consider, Criteria

- (a) whether the grounds on which the original order was made still exist;
- (b) whether the plan for the child's care that the court applied in its decision is being carried out;
- (c) what services have been provided or offered under this Act to the person who had charge of the child immediately before intervention under this Part;
- (d) whether the person is satisfied with those services;
- (e) whether the society is satisfied that the person has co-operated with the society and with any person or agency providing services;
- (f) whether the person or the child requires further services;
- (g) whether, where immediate termination of an order has been applied for but is not appropriate, a future date for termination of the order can be estimated; and
- (h) what is the least restrictive alternative that is in the child's best interests.

**62.**—(1) A Director or a person authorized by a Director shall, at least once during each calendar year, review the status of every child, Director's  
annual  
review  
of Crown  
wards

- (a) who is a Crown ward;
- (b) who was a Crown ward throughout the immediately preceding twenty-four months; and
- (c) whose status has not been reviewed under this section or under section 61 during that time.



Idem

(2) After a review under subsection (1), the Director may direct the society to make an application for review of the child's status under subsection 60 (2) or give any other direction that, in the Director's opinion, is in the child's best interests.

Investigation  
by judge

**63.**—(1) The Minister may appoint a judge of the Supreme Court, District Court, Unified Family Court, Provincial Court (Family Division), Provincial Court (Criminal Division), Provincial Offences Court or Provincial Court (Civil Division) to investigate a matter relating to,

(a) a child in a society's care; or

(b) the proper administration of this Part,

and the judge shall conduct the investigation and make a written report to the Minister.

Powers of  
judgeR.S.O. 1980,  
c. 411

(2) For the purposes of an investigation under subsection (1), the judge has the powers of a commission under Part II of the *Public Inquiries Act*, and that Part applies to the investigation as if it were an inquiry under that Act.

Society  
review  
procedure

**64.**—(1) A society shall establish a written review procedure, which shall be approved by a Director, for hearing and dealing with complaints by any person regarding services sought or received from the society, and shall make the review procedure available to any person on request.

Idem

(2) A review procedure established under subsection (1), shall include an opportunity for the person making the complaint to be heard by the society's board of directors.

Further  
review by  
Director

(3) A person who makes a complaint and is not satisfied with the response of the society's board of directors may have the matter reviewed by a Director.

#### APPEALS

Appeal

**65.**—(1) An appeal from a court's order under this Part may be made to the District Court by,

(a) the child, if the child is entitled to participate in the proceeding under subsection 39 (6) (child's participation);

(b) any parent of the child;



- (c) the person who had charge of the child immediately before intervention under this Part;
- (d) a Director or local director; or
- (e) where the child is an Indian or a native person, a representative chosen by the child's band or native community.

(2) Subsection (1) does not apply to an order for an assessment under section 50. Exception

(3) Where a decision regarding the care and custody of a child is appealed under subsection (1), execution of the decision shall be stayed for the ten days immediately following service of the notice of appeal on the court that made the decision, and where the child is in the society's custody at the time the decision is made, the child shall remain in the care and custody of the society until, Care and custody pending appeal

(a) the ten day period of the stay has expired; or

(b) an order is made under subsection (4),

whichever is earlier.

(4) The District Court may, in the child's best interests, make a temporary order for the child's care and custody pending final disposition of the appeal, except an order placing the child in a place of secure custody as defined in Part IV (Young Offenders) or a place of secure temporary detention as defined in that Part that has not been designated as a place of safety, and the District Court may, on any party's motion before the final disposition of the appeal, vary or terminate the order or make a further order. Temporary order

(5) No extension of the time for an appeal shall be granted where the child has been placed for adoption under Part VII (Adoption). No extension where child placed for adoption

(6) The District Court may receive further evidence relating to events after the appealed decision. Further evidence

(7) An appeal under this section shall be heard in the county or district in which the order appealed from was made. Place of hearing

(8) Section 41 (hearings private, etc.) applies with necessary modifications to an appeal under this section. s. 41 applies

## EXPIRY OF ORDERS

Twenty-four  
month rule

**66.**—(1) Subject to subsection (3), the court shall not make an order under this Part that results in a child being a society ward for a continuous period exceeding twenty-four months.

Idem

(2) In the calculation of the twenty-four month period referred to in subsection (1), time during which a child is in a society's care,

(a) under an agreement made under subsection 29 (1) or 30 (1) (temporary care or special needs agreement) of Part II (Voluntary Access to Services); or

(b) under a temporary order made under clause 47 (2) (d),

shall be counted.

Idem

(3) Where the twenty-four month period referred to in subsection (1) expires and,

(a) an appeal of an order made under subsection 53 (1) has been commenced and is not yet finally disposed of; or

(b) the court has adjourned a hearing under section 61 (status review),

the period shall be deemed to be extended until the appeal has been finally disposed of and any new hearing ordered on appeal has been completed or an order has been made under section 61, as the case may be.

Expiry of  
orders

**67.**—(1) An order under this Part expires when the child who is the subject of the order,

(a) attains the age of eighteen years; or

(b) marries,

whichever comes first.

Crown ward:  
continuing  
care

(2) Where an order for Crown wardship expires under subsection (1), the society may, with a Director's approval, continue to provide care and maintenance for the former Crown ward in accordance with the regulations.

## DUTY TO REPORT

**68.**—(1) In this section and in sections 69, 70 and 71, “to suffer abuse”, when used in reference to a child, means to be in need of protection within the meaning of clause 37 (2) (a), (c), (e), (f) or (h). Interpretation

(2) A person who believes on reasonable grounds that a child is or may be in need of protection shall forthwith report the belief and the information upon which it is based to a society. Duty to report that child in need of protection

(3) Despite the provisions of any other Act, a person referred to in subsection (4) who, in the course of his or her professional or official duties, has reasonable grounds to suspect that a child is or may be suffering or may have suffered abuse shall forthwith report the suspicion and the information on which it is based to a society. Idem: professional or official duties, suspicion of abuse

(4) Subsection (3) applies to every person who performs professional or official duties with respect to a child, including, Application of subs. (3)

- (a) a health care professional, including a physician, nurse, dentist, pharmacist and psychologist;
- (b) a teacher, school principal, social worker, family counsellor, priest, rabbi, clergyman, operator or employee of a day nursery and youth and recreation worker;
- (c) a peace officer and a coroner;
- (d) a solicitor; and
- (e) a service provider and an employee of a service provider.

(5) In clause (4) (b), “youth and recreation worker” does not include a volunteer. Interpretation

(6) A society that obtains information that a child in its care and custody is or may be suffering or may have suffered abuse shall forthwith report the information to a Director. Duty of society

(7) This section applies although the information reported may be confidential or privileged, and no action for making the report shall be instituted against a person who acts in accordance with subsection (2) or (3) unless the person acts Section overrides privilege

maliciously or without reasonable grounds for the belief or suspicion, as the case may be.

Exception:  
solicitor  
client  
privilege

(8) Nothing in this section abrogates any privilege that may exist between a solicitor and his or her client.

#### REVIEW TEAMS

Interpretation

**69.—**(1) In this section, “review team” means a team established by a society under subsection (2).

Review  
teams

(2) Every society shall establish a review team that includes,

(a) persons who are professionally qualified to perform medical, psychological, developmental, educational or social assessments; and

(b) at least one legally qualified medical practitioner.

Chairman

(3) The members of a review team shall choose a chairman from among themselves.

Duty of  
team

(4) Whenever a society refers the case of a child who may be suffering or may have suffered abuse to its review team, the review team or a panel of at least three of its members, designated by the chairman, shall,

(a) review the case; and

(b) recommend to the society how the child may be protected.

Disclosure to  
team  
permitted

(5) Despite the provisions of any other Act, a person may disclose to a review team or to any of its members information reasonably required for a review under subsection (4).

Subsection  
overrides  
privilege

(6) Subsection (5) applies although the information disclosed may be confidential or privileged and no action for disclosing the information shall be instituted against a person who acts in accordance with subsection (5), unless the person acts maliciously or without reasonable grounds.

Where child  
not to be  
returned  
without  
review  
or  
hearing

(7) Where a society with a review team has information that a child placed in its care under subsection 47 (2) (temporary care and custody) or subsection 53 (1) (order where child in need of protection) may have suffered abuse, the society shall not return the child to the care of the person who had charge of the child at the time of the possible abuse unless,



- (a) the society has,
  - (i) referred the case to its review team, and
  - (ii) obtained and considered the review team's recommendations; or
- (b) the court has terminated the order placing the child in the society's care.

COURT-ORDERED ACCESS TO RECORDS

**70.—**(1) In this section, “record” means recorded information, regardless of physical form or characteristics. Interpretation

(2) A Director or society may make a motion at any time for an order under subsection (3) for the production of a record or part of a record, on notice to the person in possession or control of the record. Motion for order

- (3) Where the court is satisfied that, Order for production
  - (a) a record contains information that may be relevant to a consideration of whether a child is suffering abuse or is likely to suffer abuse; and
  - (b) the person in possession or control of the record has refused to permit the Director or local director to inspect it,

the court may order that the person produce the record or a specified part of the record for inspection and copying by the Director or local director or a person authorized by one of them or by the court.

(4) In considering whether to make an order under subsection (3), the court may examine the record. Court may examine record

(5) No person who obtains information by means of an order made under subsection (3) shall disclose the information except, Information confidential

- (a) as specified in the order; and
- (b) in testimony in a proceeding under this Part.

(6) Subject to subsection (7), this section applies despite any other Act, but nothing in this section abrogates any privilege that may exist between a solicitor and his or her client. Application: solicitor client privilege excepted



Matters  
to be  
considered  
by court  
R.S.O. 1980,  
c. 262

(7) Where an application under subsection (2) concerns a record that is a clinical record within the meaning of section 29 of the *Mental Health Act*, subsection 29 (6) (attending physician's statement, hearing) of that Act applies and the court shall give equal consideration to,

- (a) the matters to be considered under subsection 29 (7) of that Act; and
- (b) the need to protect the child's health and safety.

#### CHILD ABUSE REGISTER

Interpretation

**71.—**(1) In this section and in section 72,

- (a) "Director" means the person appointed under subsection (2);
- (b) "register" means the register maintained under subsection (5);
- (c) "registered person" means a person identified in the register, but does not include,
  - (i) a person who reports to a society under subsection 68 (2) or (3) and is not the subject of the report, or
  - (ii) the child who is the subject of a report.

Director

(2) The Minister may appoint an employee of the Ministry as Director for the purposes of this section.

Duty of  
society

(3) A society that receives a report under section 68 that a child, including a child in the society's care, is or may be suffering or may have suffered abuse shall forthwith verify the reported information, or ensure that the information is verified by another society, in the manner determined by the Director, and if the information is verified, the society that verified it shall forthwith report it to the Director in the prescribed form.

Protection  
from  
liability

(4) No action or other proceeding for damages shall be instituted against an officer or employee of a society, acting in good faith, for an act done in the execution or intended execution of the duty imposed on the society by subsection (3) or for an alleged neglect or default of that duty.

Child abuse  
register

(5) The Director shall maintain a register in the manner prescribed by the regulations for the purpose of recording

information reported to the Director under subsection (3), but the register shall not contain information that has the effect of identifying a person who reports to a society under subsection 68 (2) or (3) and is not the subject of the report.

(6) Despite the provisions of any other Act, no person shall inspect, remove, alter or permit the inspection, removal or alteration of information maintained in the register, or disclose or permit the disclosure of information that the person obtained from the register, except as this section authorizes.

Register  
confidential

(7) A person who is,

Coroner's  
inquest, etc.

(a) a coroner, or a legally qualified medical practitioner or peace officer authorized in writing by a coroner, acting in connection with an investigation or inquest under the *Coroners Act*; or

R.S.O. 1980,  
c. 93

(b) the Official Guardian or the Official Guardian's authorized agent,

may inspect, remove and disclose information in the register in accordance with his or her authority.

(8) The Minister or the Director may permit,

Minister or  
Director may  
permit access  
to register

(a) a person who is employed by,

(i) the Ministry,

(ii) a society, or

(iii) a recognized child protection agency outside Ontario; or

(b) a person who is providing or proposes to provide counselling or treatment to a registered person,

to inspect and remove information in the register and to disclose the information to a person referred to in subsection (7) or to another person referred to in this subsection, subject to such terms and conditions as the Director may impose.

(9) The Minister or the Director may disclose information in the register to a person referred to in subsection (7) or (8).

Director may  
disclose  
information

(10) A person who is engaged in research may, with the Director's written approval, inspect and use the information in the register, but shall not,

Research

(a) use or communicate the information for any purpose except research, academic pursuits or the compilation of statistical data; or

(b) communicate any information that may have the effect of identifying a person named in the register.

Registered person

(11) A child, a registered person or the child's or registered person's solicitor or agent may inspect only the information in the register that refers to the child or registered person.

Physician

(12) A legally qualified medical practitioner may, with the Director's written approval, inspect the information in the register that is specified by the Director.

Amendment of register

(13) The Director or an employee of the Ministry acting under the Director's authority,

(a) shall remove a name from or otherwise amend the register where the regulations require the removal or amendment; and

(b) may amend the register to correct an error.

Register inadmissible: exceptions

(14) The register shall not be admitted into evidence in a proceeding except,

(a) to prove compliance or non-compliance with this section;

(b) in a hearing or appeal under section 72;

R.S.O. 1980, c. 93

(c) in a proceeding under the *Coroners Act*; or

(d) in a proceeding referred to in section 77 (recovery on child's behalf).

Interpretation

**72.**—(1) In this section, "hearing" means a hearing held under clause (4) (b).

Notice to registered person

(2) Where an entry is made in the register, the Director shall forthwith give written notice to each registered person referred to in the entry indicating that,

(a) the person is identified in the register;

(b) the person or the person's solicitor or agent is entitled to inspect the information in the register that refers to or identifies the person; and

- (c) the person is entitled to request that the Director remove the person's name from or otherwise amend the register.

(3) A registered person who receives notice under subsection (2) may request that the Director remove the person's name from or otherwise amend the register.

Request to  
amend  
register

(4) On receiving a request under subsection (3), the Director may,

Director's  
response

- (a) grant the request; or

- (b) hold a hearing, on ten days written notice to the parties, to determine whether to grant or refuse the request.

(5) The Director may authorize another person to hold a hearing and exercise the Director's powers and duties under subsection (8).

Delegation

(6) The *Statutory Powers Procedure Act* applies to a hearing and a hearing shall be conducted in accordance with the prescribed practices and procedures.

R.S.O. 1980,  
c. 484 applies

- (7) The parties to a hearing are,

Hearing

- (a) the registered person;
- (b) the society that verified the information referring to or identifying the registered person; and
- (c) any other person specified by the Director.

(8) Where the Director determines, after holding a hearing, that the information in the register with respect to a registered person is in error or should not be in the register, the Director shall remove the registered person's name from or otherwise amend the register, and may order that the society's records be amended to reflect the Director's decision.

Director's  
decision

(9) A party to a hearing may appeal the Director's decision to the Divisional Court.

Appeal to  
Divisional  
Court

(10) A hearing or appeal under this section shall be held in the absence of the public and no media representative shall be permitted to attend.

Hearing  
private



## Publication

(11) No person shall publish or make public information that has the effect of identifying a witness at or a participant in a hearing, or a party to a hearing other than a society.

## Record inadmissible: exception

(12) The record of a hearing or appeal under this section shall not be admitted into evidence in any other proceeding except a proceeding under clause 81 (1) (d) (confidentiality of register) or clause 81 (1) (e) (amendment of society's records).

## POWERS OF DIRECTOR

## Director's power to transfer

**73.**—(1) A Director may direct, in the best interests of a child in the care or supervision of a society, that the child,

- (a) be transferred to the care or supervision of another society; or
- (b) be transferred from one placement to another placement designated by the Director.

## Criteria

(2) In determining whether to direct a transfer under clause (1) (b), the Director shall take into account,

- (a) the length of time the child has spent in the existing placement;
- (b) the views of the foster parents; and
- (c) the views and preferences of the child, where they are reasonably ascertainable.

## HOMEMAKERS

## Interpretation

**74.**—(1) In this section, “homemaker” means a person who is approved by a Director or local director for the purposes of this section.

## Homemaker may remain on premises

(2) Where it appears to a person entering premises under section 40 that,

- (a) a child who in the person's opinion is unable to care for himself or herself has been left on the premises without competent care or supervision; and
- (b) no person having charge of the child is available or able to consent to the placement of a homemaker on the premises,

the person may, instead of taking the child to a place of safety,



- (c) remain on the premises; or
- (d) arrange with a society for the placement of a homemaker on the premises.

(3) A homemaker who remains or is placed on premises under subsection (2) may enter and live there, carry on normal housekeeping activities that are reasonably necessary for the care of any child on the premises and exercise reasonable control and discipline over any such child.

Homemaker's  
authority

(4) No action shall be instituted against a homemaker who remains or is placed on premises under subsection (2) for,

Protection  
from  
personal  
liability

- (a) entering and living on the premises;
- (b) anything done or omitted in connection with normal housekeeping activities on the premises;
- (c) providing goods and services reasonably necessary for the care of any child on the premises; or
- (d) the exercise of reasonable control and discipline over any child on the premises,

so long as the homemaker acts in good faith with reasonable care in the circumstances.

(5) Where a homemaker remains or is placed on premises under subsection (2), the society shall forthwith notify or make reasonable efforts to notify the person last having charge of the child that a homemaker has been placed on the premises.

Notice to  
person  
having charge  
of child

(6) Where a child with whom a homemaker has been placed under subsection (2),

Court order,  
etc.

- (a) is found not to be in need of protection, the homemaker shall leave the premises; or
- (b) is found to be in need of protection, the court may authorize the homemaker to remain on the premises until,
  - (i) a specified day not more than thirty days from the date of the order, or
  - (ii) a person who is entitled to custody of the child returns to care for the child,

whichever is sooner.

Extension

(7) Where no person returns to care for the child before the day specified in an order under clause (6) (b), the court may,

(a) extend the order; or

(b) hold a further hearing under section 43 and make an order under section 53.

OFFENCES, RESTRAINING ORDERS, RECOVERY ON CHILD'S  
BEHALF

Interpretation

**75.**—(1) In this section, “abuse” means a state or condition of being physically harmed, sexually molested or sexually exploited.

Child abuse

(2) No person having charge of a child shall,

(a) inflict abuse on the child; or

(b) by failing to care and provide for or supervise and protect the child adequately,

(i) permit the child to suffer abuse, or

(ii) permit the child to suffer from a mental, emotional or developmental condition that, if not remedied, could seriously impair the child's development.

Leaving  
child  
unattended

(3) No person having charge of a child less than sixteen years of age shall leave the child without making provision for his or her supervision and care that is reasonable in the circumstances.

Reverse onus

(4) Where a person is charged with contravening subsection (3) and the child is less than ten years of age, the onus of establishing that the person made provision for the child's supervision and care that was reasonable in the circumstances rests with the person.

Allowing  
child to  
loiter, etc.

(5) No person having charge of a child less than sixteen years of age shall permit the child to,

(a) loiter in a public place; or

(b) be in a place of public entertainment, unless accompanied by the person or by an individual eighteen

years of age or older who is appointed by the person,

between the hours of midnight and 6 a.m.

(6) Where a child who is actually or apparently less than sixteen years of age is in a place to which the public has access, unaccompanied by a responsible adult, between the hours of midnight and 6 a.m., a peace officer may apprehend the child without a warrant and proceed as if the child had been apprehended under subsection 40 (10) (child under twelve).

Police may take child home or to place of safety

(7) The court may, in connection with a case arising under subsection (2), (3) or (5), proceed under this Part as if an application had been made under subsection 40 (1) (child protection proceeding) in respect of the child.

Child protection hearing

**76.**—(1) Where the court finds that a child is in need of protection, the court may, instead of or in addition to making an order under subsection 53 (1), make an order in the child's best interests restraining or prohibiting a person's access to or contact with the child, and may include in the order such directions as the court considers appropriate for implementing the order and protecting the child.

Restraining order

(2) An order shall not be made under subsection (1) unless notice of the proceeding has been served personally on the person to be named in the order.

Idem: notice

(3) An order made under subsection (1) shall be in force for a specified period not exceeding six months.

Six month maximum

(4) An application for the extension, variation or termination of an order made under subsection (1) may be made by,

Extension, variation and termination

- (a) the person who is the subject of the order;
- (b) the child;
- (c) the person having charge of the child;
- (d) a society;
- (e) a Director; or
- (f) where the child is an Indian or a native person, a representative chosen by the child's band or native community.

Idem

(5) Where an application is made under subsection (4), the court may, in the child's best interests,

- (a) extend the order for a further period or periods of six months; or
- (b) vary or terminate the order.

Child in  
society's  
care not to  
be returned  
while order  
in force

(6) Where a society has care of a child and an order made under subsection (1) prohibiting a person's access to the child is in force, the society shall not return the child to the care of,

- (a) the person named in the order; or
- (b) a person who may permit that person to have access to the child.

Interpretation

**77.**—(1) In this section, “to suffer abuse”, when used in reference to a child, means to be in need of protection within the meaning of clause 37 (2) (a), (c), (e), (f) or (h).

Recovery  
on child's  
behalf

(2) When the Official Guardian is of the opinion that a child has a cause of action or other claim because the child has suffered abuse, the Official Guardian may, if he or she considers it to be in the child's best interests, institute and conduct proceedings on the child's behalf for the recovery of damages or other compensation.

Idem:  
society

(3) Where a child is in a society's care and custody, subsection (2) also applies to the society with necessary modifications.

Prohibition

**78.** No person shall place a child in the care and custody of a society, and no society shall take a child into its care and custody, except,

- (a) in accordance with this Part; or
- (b) under an agreement made under subsection 29 (1) or 30 (1) (temporary care or special needs agreement) of Part II (Voluntary Access to Services).

Offence

**79.** Where a child is the subject of an order for society supervision, society wardship or Crown wardship under subsection 53 (1), no person shall,

- (a) induce or attempt to induce the child to leave the care of the person with whom the child is placed by the court or by the society, as the case may be;



- (b) detain or harbour the child after the person or society referred to in clause (a) requires that the child be returned;
- (c) interfere with the child or remove or attempt to remove the child from any place; or
- (d) for the purpose of interfering with the child, visit or communicate with the person referred to in clause (a).

**80.** No person shall,

Offence

- (a) knowingly give false information in an application under this Part; or
- (b) obstruct, interfere with or attempt to obstruct or interfere with a child protection worker who is acting under section 40.

**81.—(1)** A person who contravenes,

Offences

- (a) an order for access made under subsection 54 (1);
- (b) subsection 68 (3) (reporting child abuse);
- (c) subsection 70 (5) (disclosure of information obtained by court order);
- (d) subsection 71 (6) or (10) (confidentiality of child abuse register);
- (e) an order made under subsection 72 (8) (amendment of society's records);
- (f) subsection 75 (3) or (5) (leaving child unattended, etc.);
- (g) a restraining order made under subsection 76 (1);
- (h) section 78 (unauthorized placement);
- (i) any provision of section 79 (interference with child, etc.); or
- (j) clause 80 (a) or (b),

and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation is guilty of an offence and on conviction is liable



to a fine of not more than \$1,000 or, except in the case of a contravention of subsection 68 (3), to imprisonment for a term of not more than one year, or to both.

Idem

(2) A person who contravenes subsection 75 (2) (child abuse), and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation is guilty of an offence and on conviction is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than two years, or to both.

Idem

(3) A person who contravenes subsection 41 (8) or 72 (11) (publication of identifying information) or an order prohibiting publication made under clause 41 (7) (c) or subsection 41 (9), and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation, is guilty of an offence and on conviction is liable to a fine of not more than \$10,000 or to imprisonment for a term of not more than three years, or to both.

#### CHILD'S RELIGIOUS FAITH

How child's  
religious  
faith  
determined

**82.—**(1) For the purposes of this section, a child shall be deemed to have the religious faith agreed upon by the child's parent, but where there is no agreement or the court cannot readily determine what the religious faith agreed upon is or whether any religious faith is agreed upon, the court may decide what the child's religious faith is, if any, on the basis of the child's circumstances.

Child's  
wishes to  
be consulted

(2) The court shall consider the child's views and wishes, if they can be reasonably ascertained, in determining what the child's religious faith is, if any.

Religious  
faith of  
child

(3) A Protestant child shall not be committed under this Part to the care of a Roman Catholic society or institution and a Roman Catholic child shall not be committed under this Part to a Protestant society or institution, and a Protestant child shall not be placed in a foster home with a Roman Catholic family and a Roman Catholic child shall not be placed in a foster home with a Protestant family, and, where a child committed under this Part is other than Protestant or Roman Catholic, the child shall be placed where practicable with a family of his or her own religious faith, if any.

Where only  
one society

(4) Subsection (3) does not apply to the commitment of a child to the care of a society in a municipality in which there is only one society.

Director's  
discretion re  
foster  
placement

(5) Where a society,

- (a) is unable to place a child in a suitable foster home within a reasonable time because of the operation of subsection (3); and
- (b) would be able to place the child in a suitable foster home but for the operation of subsection (3),

the society may apply to a Director who may order that subsection (3) does not apply to the child in respect of the placement.

#### INJUNCTIONS

**83.**—(1) The Supreme Court may grant an injunction to restrain a person from contravening section 79, on the society's application. Injunction

(2) The Supreme Court may vary or terminate an order made under subsection (1), on any person's application. Variation,  
etc.

## PART IV

## YOUNG OFFENDERS

Interpretation

**84.** In this Part,

- (a) “bailiff” means a bailiff appointed under clause 86 (1) (c);
- (b) “Board” means the Custody Review Board established under subsection 92 (1);
- (c) “federal Act” means the *Young Offenders Act* (Canada);
- (d) “maximum security place of custody” means a place of secure custody in which the Minister has established a maximum security custody program;
- (e) “medium security place of custody” means a place of secure custody in which the Minister has established a medium security custody program;
- (f) “place of open custody” means a place or facility designated as a place of open custody under subsection 24 (1) of the federal Act and operated by or for the Minister;
- (g) “place of open temporary detention” means a place of temporary detention in which the Minister has established an open detention program;
- (h) “place of secure custody” means a place or facility designated for the secure containment or restraint of young persons under subsection 24 (1) of the federal Act and operated by or for the Minister;
- (i) “place of secure temporary detention” means a place of temporary detention in which the Minister has established a secure detention program;
- (j) “place of temporary detention” means a place or facility designated as a place of temporary detention under subsection 7 (1) of the federal Act and operated by or for the Minister;
- (k) “probation officer” means a probation officer appointed under clause 86 (1) (b);

S.C. 1980-  
81-82-83,  
c. 110

- (l) “provincial director” means a provincial director appointed under clause 86 (1) (a);
- (m) “services and programs” means,
  - (i) prevention programs,
  - (ii) pre-trial detention and supervision programs,
  - (iii) open and secure custody programs,
  - (iv) probation services,
  - (v) programs for the administration and supervision of dispositions, and
  - (vi) other related services and programs;
- (n) “young person” means a child as defined in paragraph 6 of subsection 3 (1) who is, or, in the absence of evidence to the contrary, appears to be,
  - (i) twelve years of age, or more, but
  - (ii) under sixteen years of age,

and includes a person sixteen years of age or more charged with having committed an offence while he or she was twelve years of age or more but under sixteen years of age.

#### PROGRAMS AND OFFICERS

**85.—(1)** The Minister may,

Services  
and  
programs

- (a) establish, operate and maintain services and programs; and
- (b) make agreements with persons for the provision of services and programs,

for or on behalf of young persons for the purposes of the federal Act and the *Provincial Offences Act*, and may make payments for those services and programs out of legislative appropriations.

R.S.O. 1980,  
c. 400

(2) The Minister may establish,

Secure  
and open  
temporary  
detention  
programs

- (a) secure temporary detention programs, in which restrictions are continuously imposed on the liberty of young persons by physical barriers, close staff supervision or limited access to the community; and
- (b) open temporary detention programs, in which restrictions that are less stringent than in a secure temporary detention program are imposed on the liberty of young persons,

in places of temporary detention.

Maximum  
and medium  
security  
custody  
programs

(3) The Minister may establish,

- (a) maximum security custody programs, in which restrictions are continuously imposed on the liberty of young persons by physical barriers, close staff supervision or limited access to the community; and
- (b) medium security custody programs, in which restrictions that are less stringent than in a maximum security custody program are imposed on the liberty of young persons,

in places of secure custody.

Open custody  
programs

(4) The Minister may establish open custody programs in places of open custody.

Where  
locking up  
permitted

(5) A place of secure custody and a place of secure temporary detention may be locked for the detention of young persons.

Appointments  
by Minister

**86.**—(1) The Minister may appoint any person as,

- (a) a provincial director, to perform any or all of the duties and functions of a provincial director,
  - (i) under the federal Act, and
  - (ii) under the regulations;
- (b) a probation officer, to perform any or all of the duties and functions,
  - (i) of a youth worker under the federal Act, and
  - (ii) of a probation officer for the purpose of dealing with young persons under the *Provincial Offences Act*, and



(iii) of a probation officer under the regulations;  
and

(c) a bailiff, to perform any or all of the duties and functions of a bailiff under the regulations.

(2) The Minister may set out in an appointment made under subsection (1) any conditions or limitations to which it is subject. Limitations, etc., on appointments

(3) While performing their duties and functions, a probation officer appointed under clause (1) (b) and a bailiff appointed under clause (1) (c) have the powers of a peace officer. Probation officer and bailiff have powers of peace officer

(4) The remuneration and expenses of a person appointed under subsection (1) who is not a public servant under the *Public Service Act* shall be fixed by the Minister and shall be paid out of legislative appropriations. Remuneration and expenses  
R.S.O. 1980, c. 418

**87.**—(1) With the approval of a provincial director, services may be provided under this Part to a person sixteen years of age or more who is a young person within the meaning of the federal Act but not within the meaning of clause 84 (n). Approval of provincial director for provision of services to person over sixteen

(2) A person who is the subject of an approval under subsection (1) shall be deemed to be a young person for the purposes of this Part. Person deemed to be young person

**88.** A person in charge of a service or program provided under subsection 85 (1), a person in charge of a place of temporary detention, open custody or secure custody, a bailiff and a probation officer, Reports and information

(a) shall make the prescribed reports and furnish the prescribed information to the Minister, in the prescribed form and at the prescribed intervals; and

(b) shall make a report to the Minister whenever the Minister requests it, in the form and containing the information specified by the Minister.

#### TEMPORARY DETENTION

**89.**—(1) A young person who is detained under the federal Act in a place of temporary detention shall be detained in a place of open temporary detention unless a provincial director determines under subsection (2) that the young person is to be detained in a place of secure temporary detention. Open detention unless provincial director determines otherwise

Where  
secure  
detention  
available

(2) A provincial director may detain a young person in a place of secure temporary detention if the young person is charged with an offence for which an adult would be liable to imprisonment for five years or more and,

- (a) the offence includes causing or attempting to cause serious bodily harm to another person;
- (b) the young person has, at any time, failed to appear in court when required to do so under the federal Act or the *Juvenile Delinquents Act* (Canada) or escaped or attempted to escape from lawful detention; or
- (c) the young person has, within the twelve months immediately preceding the offence on which the current charge is based, been convicted of an offence for which an adult would be liable to imprisonment for five years or more,

R.S.C. 1970,  
c. J-3

where the provincial director is satisfied that it is necessary to detain the young person in a place of secure temporary detention,

- (d) to ensure the young person's attendance in court; or
- (e) to protect the public interest or safety.

Idem

(3) Despite subsection (1), a young person who is apprehended because he or she has left or has not returned to a medium security or maximum security place of custody may be detained in a place of secure temporary detention until he or she is returned to the first-named place of custody.

Idem

(4) Despite subsection (1), a young person who is detained under the federal Act in a place of temporary detention may be detained in a place of secure temporary detention for a period not exceeding twenty-four hours while a provincial director makes a determination in respect of the young person under subsection (2).

Review  
by youth  
court

R.S.C. 1970,  
c. C-34

(5) A young person who is being detained in a place of secure temporary detention and is brought before a youth court for a review under the *Criminal Code* (Canada) may request that the youth court review the level of his or her detention, and the youth court may confirm the provincial director's decision under subsection (2) or may direct that the young person be transferred to a place of open temporary detention.

## CUSTODY

**90.**—(1) A young person who is committed to secure custody under the federal Act shall be held in a medium security place of custody unless a provincial director determines under subsection (2) that the young person is to be held in a maximum security place of custody.

Medium rather than maximum security custody unless provincial director determines otherwise

(2) A provincial director may place a young person in or transfer a young person to a maximum security place of custody if the young person is committed to secure custody under the federal Act for an offence for which an adult would be liable to imprisonment for five years or more and,

Where maximum security custody available

- (a) the offence for which the young person is committed to secure custody includes causing or attempting to cause serious bodily harm to another person; or
- (b) the young person has, within the twelve months immediately preceding the offence for which he or she is committed to secure custody,
  - (i) been held in a maximum security place of custody, or
  - (ii) been found guilty of an offence for which an adult would be liable to imprisonment for five years or more,

where the provincial director is satisfied that it would not be appropriate to hold the young person in a medium security place of custody, having regard to,

- (c) the young person's age and previous history;
- (d) the circumstances of the commission of the offence for which the young person is committed to secure custody;
- (e) the contents of a pre-disposition report;
- (f) the needs of the young person; and
- (g) the need to protect the public interest and safety.

(3) A provincial director may transfer a young person from a maximum security place of custody to a medium security place of custody if the provincial director is satisfied that the

Transfer from maximum to medium security custody

transfer is justified because the young person has made sufficient progress or for some other appropriate reason.

Reasons

(4) A provincial director who makes a determination under this section shall give written reasons for the determination to the young person and to the persons in charge of the places of custody from and to which the young person is transferred.

Young  
persons in  
open custody  
R.S.O. 1980,  
c. 400

**91.** Where a young person is sentenced to a term of imprisonment for breach of probation under clause 75 (d) of the *Provincial Offences Act*, to be served in open custody as set out in section 91k of that Act,

- (a) the young person shall be held in a place of open custody specified by a provincial director; and
- (b) the provisions of section 35 (temporary release) of the federal Act apply with necessary modifications.

#### CUSTODY REVIEW BOARD

Custody  
Review  
Board

**92.**—(1) The Custody Review Board is established, composed of the prescribed number of members appointed by the Lieutenant Governor in Council, and has the powers and duties given to it by this Part and the regulations.

Chairman  
and vice-  
chairmen

(2) The Lieutenant Governor in Council may appoint a member of the Board as chairman and may appoint one or more other members as vice-chairmen.

Term

(3) A member of the Board shall hold office for the prescribed term.

Quorum

(4) The prescribed number of members of the Board are a quorum.

Remuneration

(5) The chairman and vice-chairmen and the other members of the Board shall be paid the *per diem* allowances determined by the Lieutenant Governor in Council and are entitled to their reasonable and necessary travelling and living expenses while attending meetings or otherwise engaged in the work of the Board.

Duties of  
Board

(6) The Board shall conduct reviews under section 93 and perform such other duties as are assigned to it by the regulations.

Application  
to Board

**93.**—(1) A young person may apply to the Board for a review of,



- (a) a provincial director's decision to hold the young person in or transfer the young person to a maximum security place of custody;
- (b) the particular place where the young person is held or to which the young person has been transferred;
- (c) a provincial director's refusal to authorize the young person's temporary release under section 35 of the federal Act; or
- (d) the young person's transfer from a place of open custody to a place of secure custody under subsection 24 (9) of the federal Act,

within thirty days of the decision, placement or transfer, as the case may be.

(2) The Board shall conduct a review with respect to an application made under subsection (1) and may do so by holding a hearing. Duty of Board

(3) The Board shall advise the young person whether it intends to hold a hearing or not within ten days of receiving the young person's application. Idem

(4) The *Statutory Powers Procedure Act* does not apply to a hearing held under subsection (2). R.S.O. 1980, c. 484, does not apply

(5) The Board shall complete its review and make a determination within thirty days of receiving a young person's application, unless, Idem

- (a) the Board holds a hearing with respect to the application; and
- (b) the young person and the provincial director whose decision is being reviewed consent to a longer period for the Board's determination.

(6) After conducting a review under subsection (2), the Board may, Board's recommendations

- (a) recommend to the provincial director,
  - (i) that the young person be transferred to a medium security place of custody,
  - (ii) where the Board is of the opinion that the place where the young person is held or to



which he or she has been transferred is not appropriate to meet the young person's needs, that the young person be transferred to another place,

- (iii) that the young person's temporary release be authorized under section 35 of the federal Act, or
- (iv) where the young person has been transferred under subsection 24 (9) of the federal Act, that the young person be returned to a place of open custody; or

(b) confirm the decision, placement or transfer.

#### APPREHENSION OF YOUNG PERSONS WHO ARE ABSENT FROM CUSTODY WITHOUT PERMISSION

Apprehension of young person absent from place of temporary detention  
R.S.O. 1980, c. 400

**94.—**(1) A peace officer, the person in charge of a place of temporary detention or that person's delegate, who believes on reasonable and probable grounds that a young person detained under the federal Act or the *Provincial Offences Act* in a place of temporary detention,

- (a) has left the place without the consent of the person in charge; and
- (b) fails or refuses to return there,

may apprehend the young person with or without a warrant and,

- (c) take the young person to a place of temporary detention to be detained until he or she can be returned;
- (d) arrange for the young person to be returned; or
- (e) return the young person,

to the first-mentioned place of temporary detention.

Idem:  
place of open custody

(2) A peace officer, the person in charge of a place of open custody or that person's delegate, who believes on reasonable and probable grounds that a young person held in a place of open custody as described in section 91,

- (a) has left the place without the consent of the person in charge and fails or refuses to return there; or

- (b) fails or refuses to return to the place of open custody upon completion of a period of temporary release under clause 91 (b),

may apprehend the young person with or without a warrant and,

- (c) take the young person to a place of temporary detention to be detained until he or she can be returned;
- (d) arrange for the young person to be returned; or
- (e) return the young person,

to the first-mentioned place of open custody.

(3) A young person who is detained in a place of temporary detention under this section shall be returned to the place from which he or she is absent, as soon as possible, but in any event within forty-eight hours after being detained.

Young person to be returned within forty-eight hours

(4) A justice of the peace who is satisfied on the basis of a sworn information that there are reasonable and probable grounds to believe that a young person held in a place of temporary detention or open custody,

Warrant to apprehend young person

- (a) has left the place without the consent of the person in charge and fails or refuses to return there; or
- (b) fails or refuses to return to a place of open custody upon completion of a period of temporary release under clause 91 (b),

may issue a warrant authorizing a peace officer, the person in charge of the place of temporary detention or open custody or that person's delegate to apprehend the young person.

(5) A warrant issued under subsection (4) authorizes a person to whom it is directed to enter any premises where he or she reasonably believes the young person to be, by force if necessary, and to search for and remove the young person.

Authority to enter, etc.

(6) A person authorized to enter premises by a warrant issued under subsection (4) shall exercise the power of entry in accordance with the regulations.

Regulations re exercise of power of entry

## PART V

## RIGHTS OF CHILDREN

Interpretation **95.** In this Part, “child in care” means a child who is receiving residential services from a service provider and includes,

- (a) a child who is in the care of a foster parent; and
- (b) a child who is detained in a place of temporary detention, committed to secure or open custody under the *Young Offenders Act* (Canada), or held in a place of open custody under section 91 of Part IV (Young Offenders).

S.C. 1980-81-82-83,  
c. 110

## LOCKING UP

Locking up restricted **96.**—(1) No service provider shall detain a child or permit a child to be detained in locked premises in the course of the provision of a service to the child, except as Part IV (Young Offenders) and Part VI (Extraordinary Measures) authorize.

Application of subs. (1) (2) Subsection (1) does not prohibit the routine locking of premises for security at night.

## CORPORAL PUNISHMENT

No corporal punishment **97.** No service provider or foster parent shall inflict corporal punishment on a child or permit corporal punishment to be inflicted on a child in the course of the provision of a service to the child.

## OFFICE OF CHILD AND FAMILY SERVICE ADVOCACY

Office of Child and Family Service Advocacy **98.** The Minister may establish an Office of Child and Family Service Advocacy to,

- (a) co-ordinate and administer a system of advocacy, except for advocacy before a court, on behalf of children and families who receive or seek approved services or services purchased by approved agencies;
- (b) advise the Minister on matters and issues concerning the interests of those children and families; and
- (c) perform any similar functions given to it by this Act or the regulations or another Act or the regulations made under another Act.

## RIGHTS OF CHILDREN IN CARE

**99.—(1)** A child in care has a right,

Rights of communication, etc.

- (a) to speak in private with, visit and receive visits from members of his or her family regularly, subject to subsection (2);
- (b) to speak in private with and receive visits from,
  - (i) the child's solicitor,
  - (ii) another person representing the child, including an advocate appointed for the child by the Office of Child and Family Service Advocacy referred to in section 98,
  - (iii) the Ombudsman appointed under the *Ombudsman Act* and members of the Ombudsman's staff, and
  - (iv) a member of the Legislative Assembly of Ontario or of the Parliament of Canada; and
- (c) to send and receive mail that is not read, examined or censored by another person, subject to subsection (3).

R.S.O. 1980, c. 325

(2) A child in care who is a Crown ward is not entitled as of right to speak with, visit or receive visits from a member of his or her family, except under an order for access made under Part III (Child Protection).

When child a Crown ward

**(3)** Mail to a child in care,

Opening, etc., of mail to child

- (a) may be opened by the service provider or a member of the service provider's staff in the child's presence and may be inspected for articles prohibited by the service provider;
- (b) where the service provider believes on reasonable grounds that the contents of the mail may cause the child physical or emotional harm, may be examined or read by the service provider or a member of the service provider's staff in the child's presence, subject to clause (c);
- (c) shall not be examined or read by the service provider or a member of the service provider's staff if it is to or from the child's solicitor; and



- (d) shall not be censored or withheld from the child, except that articles prohibited by the service provider may be removed from the mail and withheld from the child.

Personal  
liberties

**100.** A child in care has a right,

- (a) to have reasonable privacy and possession of his or her own personal property; and
- (b) to receive the religious instruction and participate in the religious activities of his or her choice, subject to section 102.

Plan of  
care

**101.**—(1) A child in care has a right to a plan of care designed to meet the child's particular needs, which shall be prepared within thirty days of the child's admission to the residential placement.

Rights  
to care

(2) A child in care has a right,

- (a) to participate in the development of the child's individual plan of care and in any changes made to it;
- (b) to receive meals that are well-balanced, of good quality and appropriate for the child;
- (c) to be provided with clothing that is of good quality and appropriate for the child, given the child's size and activities and prevailing weather conditions;
- (d) to receive medical and dental care, subject to section 102, at regular intervals and whenever required, in a community setting whenever possible;
- (e) to receive an education that corresponds to the child's aptitudes and abilities, in a community setting whenever possible; and
- (f) to participate in recreational and athletic activities that are appropriate for the child's aptitudes and interests, in a community setting whenever possible.

Parental  
consent,  
etc.

**102.** Subject to subsection 47 (4) and sections 58 and 59 (temporary order, society and Crown wards) of Part III (Child Protection), the parent of a child in care retains any right that he or she may have,

- (a) to direct the child's education and religious upbringing; and



- (b) to give or refuse consent to medical treatment for the child.

**103.** A child in care has a right to be consulted and to express his or her views, to the extent that is practical given the child's level of understanding, whenever significant decisions concerning the child are made, including decisions with respect to medical treatment, education and religion and decisions with respect to the child's discharge from the placement or transfer to another residential placement.

Right to  
be heard

**104.** A child in care has a right to be informed, in language suitable for the child's level of understanding, of,

Right to  
be informed

- (a) the child's rights under this Part;
- (b) the internal complaints procedure established under subsection 105 (1) and the further review available under section 106;
- (c) the existence of the Office of Child and Family Service Advocacy referred to in section 98;
- (d) the review procedures available for children twelve years of age or older under sections 34, 35 and 36 of Part II (Voluntary Access to Services);
- (e) the review procedures available under section 93 of Part IV (Young Offenders), in the case of a child who is detained in a place of temporary detention, committed to secure or open custody under the *Young Offenders Act* (Canada), or held in a place of open custody under section 91 of Part IV (Young Offenders);
- (f) the child's responsibilities while in the placement; and
- (g) the rules governing day-to-day operation of the residential service, including disciplinary procedures,

S.C. 1980-  
81-82-83,  
c. 110

upon admission to the residential placement, to the extent that is practical given the child's level of understanding.

#### COMPLAINT AND REVIEW PROCEDURES

**105.—**(1) A service provider who provides residential services to children or places children in residential placements shall establish a written procedure, in accordance with the regulations, for hearing and dealing with complaints regarding

Internal  
complaints  
procedure

alleged violations of the rights under this Part of children in care.

Idem

(2) A service provider shall conduct a review or ensure that a review is conducted, in accordance with the procedure established under subsection (1), on the complaint of,

- (a) a child in care;
- (b) the child's parent; or
- (c) another person representing the child,

and shall seek to resolve the complaint.

Further  
review

**106.**—(1) Where a person referred to in subsection 105 (2) who makes a complaint and is not satisfied with the result of the review conducted under that subsection requests in writing that the Minister appoint a person to conduct a further review of the complaint, the Minister shall appoint a person who is not employed by the service provider to do so.

Idem

(2) A person appointed under subsection (1) shall review the complaint in accordance with the regulations and may, but is not required to, do so by holding a hearing.

R.S.O. 1980,  
c. 484 does  
not apply

(3) The *Statutory Powers Procedure Act* does not apply to a hearing held under subsection (2).

Powers of  
appointed  
person

(4) A person appointed under subsection (1) has, for the purposes of the review, all the powers of a program supervisor appointed under subsection 5 (2) of Part I (Flexible Services).

Review and  
report within  
thirty days

(5) A person appointed under subsection (1) shall, within thirty days after the day of the appointment, complete the review, set out in a report his or her findings and recommendations, including the reasons for not holding a hearing if none was held, and provide copies of the report to,

- (a) the person who made the complaint;
- (b) the service provider; and
- (c) the Minister.

Minister  
to advise  
persons  
affected  
of any  
decision

**107.**—(1) Where the Minister decides to take any action with respect to a complaint after receiving a report under subsection 106 (5), the Minister shall advise the person who made the complaint and the service provider of the decision.

(2) The Minister's decision referred to in subsection (1) does not affect any other remedy that may be available. Remedies preserved

## PART VI

## EXTRAORDINARY MEASURES

Interpretation

**108.** In this Part,

- (a) “administrator” means the person in charge of a secure treatment program;
- (b) “intrusive procedure” means,
  - (i) a mechanical means of controlling behaviour,
  - (ii) an aversive stimulation technique, or
  - (iii) any other procedure,that is prescribed as an intrusive procedure;
- (c) “mental disorder” means a substantial disorder of emotional processes, thought or cognition which grossly impairs a person’s capacity to make reasoned judgments;
- (d) “psychotropic drug” means a drug or combination of drugs prescribed as a psychotropic drug;
- (e) “review team” means an interdisciplinary review team established under subsection 123 (1);
- (f) “secure isolation room” means a locked room approved under subsection 120 (1) for use for the secure isolation of children;
- (g) “secure treatment program” means a program established or approved by the Minister under subsection 109 (1).

## SECURE TREATMENT PROGRAMS

Minister may  
establish  
or approve  
programs**109.—(1)** The Minister may,

- (a) establish, operate and maintain; or
- (b) approve,

programs for the treatment of children with mental disorders, in which continuous restrictions are imposed on the liberty of the children.

(2) The Minister may impose terms and conditions on an approval given under subsection (1) and may vary or amend the terms and conditions or impose new terms and conditions at any time.

Terms and  
conditions

(3) No child shall be admitted to a secure treatment program except by a court order under section 113 (commitment to secure treatment program) or under section 118 (emergency admission).

Admission  
of children

(4) The premises of a secure treatment program may be locked for the detention of children.

Locking up  
permitted

#### COMMITMENT TO SECURE TREATMENT

**110.**—(1) Any one of the following persons may, with the administrator's written consent, apply to the court for an order for the child's commitment to a secure treatment program:

Who may  
apply for  
order for  
child's  
commitment

1. Where the child is less than sixteen years of age,
  - i. the child's parent,
  - ii. a person other than an administrator who is caring for the child, if the child's parent consents to the application, or
  - iii. a society that has custody of the child under an order made under Part III (Child Protection).
2. Where the child is sixteen years of age or more,
  - i. the child,
  - ii. the child's parent, if the child consents to the application, or
  - iii. a physician.

(2) Where an application is made under subsection (1), the court shall deal with the matter,

Time for  
hearing

- (a) where the child has been admitted to a secure treatment program under section 118 (emergency), within five days of the making of the application; or
- (b) where the child has not been admitted to a secure treatment program under section 118, within ten



days of the making of an order under subsection (5) (legal representation) or, where no such order is made, within ten days of the making of the application.

Time for  
determination

(3) Where the child who is the subject of an application under subsection (1) has been admitted to a secure treatment program under section 118, the court shall dispose of the application within forty-five days of the making of the application, subject to subsection (4).

Adjournments

(4) The court may adjourn the hearing of an application but shall not adjourn it for more than thirty days unless the applicant and the child consent to the longer adjournment.

Legal  
representation  
of child

(5) Where an application is made under subsection (1) in respect of a child who does not have legal representation, the court shall, as soon as practicable and in any event before the hearing of the application, direct that legal representation be provided for the child.

Hearing  
private

(6) A hearing under this section shall be held in the absence of the public and no media representative shall be permitted to attend.

Child  
entitled  
to be  
present

(7) The child who is the subject of an application under subsection (1) is entitled to be present at the hearing unless,

- (a) the court is satisfied that being present at the hearing would cause the child emotional harm; or
- (b) the child, after obtaining legal advice, consents in writing to the holding of the hearing in his or her absence.

Court may  
require  
child's  
presence

(8) The court may require a child who has consented to the holding of the hearing in his or her absence under clause (7) (b) to be present at all or part of the hearing.

Child may  
waive  
hearing of  
oral  
evidence

**111.—**(1) Where an application is made under subsection 110 (1), the court shall deal with the matter by holding a hearing and shall hear oral evidence unless the child, after obtaining legal advice, consents in writing to the making of an order under subsection 113 (1) without the hearing of oral evidence, and the consent is filed with the court.

Court may  
hear oral  
evidence  
despite  
consent

(2) The court may hear oral evidence although the child has given a consent under subsection (1).

(3) A child's consent under subsection (1) is not effective for more than a single 180 day period referred to in subsection 114 (1) (period of commitment). Time limitation

**112.**—(1) The court may, at any time after an application is made under subsection 110 (1), order that the child attend within a specified time for an assessment before a specified person who is qualified, in the court's opinion, to perform an assessment to assist the court to determine whether the child should be committed to a secure treatment program and has consented to perform the assessment. Assessment

(2) The person performing an assessment under subsection (1) shall make a written report of the assessment to the court within the time specified in the order, which shall not be more than thirty days unless the court is of the opinion that a longer assessment period is necessary. Report

(3) The court shall not order an assessment to be performed by a person who provides services in the secure treatment program to which the application relates. Who may not perform assessment

(4) The court shall provide a copy of the report to, Copies of report

- (a) the applicant;
- (b) the child, subject to subsection (6);
- (c) the child's solicitor;
- (d) a parent appearing at the hearing;
- (e) the administrator of the secure treatment program; and
- (f) where the child is an Indian or a native person, a representative chosen by the child's band or native community.

(5) The court may cause a copy of the report to be given to a parent who does not attend the hearing but is, in the court's opinion, actively interested in the proceedings. Idem

(6) The court may withhold all or part of the report from the child where the court is satisfied that disclosure of all or part of the report to the child would cause the child emotional harm. Court may withhold report from child

Commitment  
to secure  
treatment:  
criteria

**113.**—(1) The court may order that a child be committed to a secure treatment program only where the court is satisfied that,

- (a) the child has a mental disorder;
- (b) the child has, as a result of the mental disorder, within the forty-five days immediately preceding,

- (i) the application under subsection 110 (1),

S.C. 1980-  
81-82-83,  
c. 110  
R.S.O.1980,  
c. 400

- (ii) the child's detention or custody under the *Young Offenders Act* (Canada) or under the *Provincial Offences Act*, or

R.S.O.1980,  
c. 262

- (iii) the child's admission to a psychiatric facility under the *Mental Health Act* as an involuntary patient,

caused or attempted to cause serious bodily harm to himself, herself or another person;

- (c) the child has,

- (i) within the twelve months immediately preceding the application, but on another occasion than that referred to in clause (b), caused, attempted to cause or by words or conduct made a substantial threat to cause serious bodily harm to himself, herself or another person, or

- (ii) in committing the act or attempt referred to in clause (b), caused or attempted to cause a person's death;

- (d) the secure treatment program would be effective to prevent the child from causing or attempting to cause serious bodily harm to himself, herself or another person;

- (e) treatment appropriate for the child's mental disorder is available at the place of secure treatment to which the application relates; and

- (f) no less restrictive method of providing treatment appropriate for the child's mental disorder is appropriate in the circumstances.

(2) Where the child is less than twelve years old, the court shall not make an order under subsection (1) unless the Minister consents to the child's commitment.

Where child under twelve

(3) Where the applicant is a physician, the court shall not make an order under subsection (1) unless the court is satisfied that the applicant believes the criteria set out in that subsection are met.

Additional requirement where applicant is physician

**114.**—(1) Where the court makes an order under subsection 113 (1), the child shall be committed to the secure treatment program for a period of 180 days, subject to subsection (2).

Period of commitment

(2) Where a child is committed to a secure treatment program on a society's application, the child shall be released on a day sixty days after the child's admission to the secure treatment program unless before that day,

Where society is applicant

(a) the child's parent consents to the child's commitment for a 180 day period; or

(b) the child is made a Crown or society ward under Part III (Child Protection).

(3) In the calculation of a child's period of commitment, time spent in the secure treatment program before an order has been made under section 113 (commitment) or pending an application under section 116 (extension) shall be counted.

How time calculated

(4) A person who is the subject of an order made under subsection 113 (1) or 116 (4) may be kept in the secure treatment program after attaining the age of eighteen years, until the order expires.

Where order expires after eighteenth birthday

**115.**—(1) Where the court makes an order under subsection 113 (1) or 116 (4), the court shall give,

Reasons, etc.

(a) reasons for its decision;

(b) a statement of the plan, if any,\*for the child's care on release from the secure treatment program; and

(c) a statement of the less restrictive alternatives considered by the court, and the reasons for rejecting them.

(2) Where no plan for the child's care on release from the secure treatment program is available at the time of the order,

Plan for care on release



the administrator shall, within ninety days of the date of the order, prepare such a plan and file it with the court.

#### EXTENSION OF PERIOD OF COMMITMENT

Who may  
apply for  
extension

**116.**—(1) Where a child is the subject of an order made under subsection 113 (1) (commitment) or subsection (4),

- (a) a person referred to in subsection 110 (1), with the administrator's written consent; or
- (b) the administrator, with a parent's written consent or, where the child is in a society's lawful custody, the society's consent,

may, before the expiry of the period of commitment, apply for an order extending the child's commitment to the secure treatment program.

Child may  
be kept in  
program  
while  
application  
pending

ss. 110 (4-8),  
111, 112  
apply

(2) Where an application is made under subsection (1), the child may be kept in the secure treatment program until the application is disposed of.

(3) Subsections 110 (4), (5), (6), (7) and (8) (hearing) and sections 111 (child's waiver) and 112 (assessment) apply with necessary modifications to an application made under subsection (1).

Criteria  
for  
extension

(4) The court may make an order extending a child's commitment to a secure treatment program only where the court is satisfied that,

- (a) the child has a mental disorder;
- (b) the secure treatment program would be effective to prevent the child from causing or attempting to cause serious bodily harm to himself, herself or another person;
- (c) no less restrictive method of providing treatment appropriate for the child's mental disorder is appropriate in the circumstances;
- (d) the child is receiving the treatment proposed at the time of the original order under subsection 113 (1), or other appropriate treatment; and
- (e) there is an appropriate plan for the child's care on release from the secure treatment program.



(5) Where the court makes an order under subsection (4), the child shall be committed to the secure treatment program for a further period of 180 days.

Period of extension

#### RELEASE BY ADMINISTRATOR

**117.**—(1) The administrator may release a child from a secure treatment program unconditionally where the administrator,

Unconditional release by administrator

- (a) has given the person with lawful custody of the child reasonable notice of the intention to release him or her; and
- (b) is satisfied that,
  - (i) the child no longer requires the secure treatment program, and
  - (ii) there is an appropriate plan for the child's care on release from the secure treatment program.

(2) The administrator may release a child from a secure treatment program temporarily for medical or compassionate reasons, or for a trial placement in an open setting, for such period and on such terms and conditions as the administrator determines.

Conditional release

(3) Subsections (1) and (2) apply despite an order made under subsection 113 (1) (commitment) or 116 (4) (extension).

Administrator may release despite court order

#### EMERGENCY ADMISSION

**118.**—(1) Any one of the following persons may apply to the administrator for the emergency admission of a child to a secure treatment program:

Who may apply for emergency admission

1. Where the child is less than sixteen years of age,
  - i. the child's parent,
  - ii. a person who is caring for the child with a parent's consent,
  - iii. a child protection worker who has apprehended the child under section 40 of Part III (Child Protection), or

- iv. a society that has custody of the child under an order made under Part III.

2. Where the child is sixteen years of age or more,

- i. the child,
- ii. the child's parent, if the child consents to the application, or
- iii. a physician.

Criteria  
for  
admission

(2) The administrator may admit a child to the secure treatment program on an application under subsection (1) where the administrator believes on reasonable grounds that,

- (a) the child has a mental disorder;
- (b) the child has, as a result of the mental disorder, during the seven days immediately preceding the day of the application, caused or attempted to cause serious bodily harm to himself, herself or another person;
- (c) the secure treatment program would be effective to prevent the child from causing or attempting to cause serious bodily harm to himself, herself or another person;
- (d) treatment appropriate for the child's mental disorder is available at the place of secure treatment to which the application relates; and
- (e) no less restrictive method of providing treatment appropriate for the child's mental disorder is appropriate in the circumstances.

Admission  
on consent

(3) The administrator may admit the child under subsection (2) although the criterion set out in clause (2) (b) is not met, where,

- (a) the other criteria set out in subsection (2) are met;
- (b) the child, after obtaining legal advice, consents to his or her admission; and
- (c) if the child is less than sixteen years of age, the child's parent or, where the child is in a society's lawful custody, the society consents to the child's admission.

(4) Where the child is less than twelve years old, the administrator shall not admit the child under subsection (2) unless the Minister consents to the child's admission.

Where child under twelve

(5) Where the applicant is a physician, the administrator shall not admit the child under subsection (2) unless the administrator is satisfied that the applicant believes the criteria set out in that subsection are met.

Additional requirement where applicant is physician

(6) As soon as practicable, but in any event within five days after a child is admitted to a secure treatment program under subsection (2),

Five day limit

- (a) the child shall be released; or
- (b) an application shall be made under section 110 for an order for the child's commitment to the secure treatment program.

#### POLICE ASSISTANCE

**119.** A peace officer may take a child to a place where there is a secure treatment program,

Police may take child for secure treatment

- (a) for emergency admission, at the request of an applicant referred to in subsection 118 (1); or
- (b) where an order for the child's commitment to the secure treatment program has been made under section 113.

#### SECURE ISOLATION

**120.—**(1) A Director may approve a locked room that complies with the prescribed standards and is located in premises where an approved service or a service purchased by an approved agency is provided, for use for the secure isolation of children, on such terms and conditions as the Director determines.

Director's approval

(2) Where a Director is of the opinion that a secure isolation room is unnecessary or is being used in a manner that contravenes this Part or the regulations, the Director may withdraw the approval given under subsection (1) and shall give the affected service provider notice of the decision, with reasons.

Withdrawal of approval

**121.—**(1) No service provider or foster parent shall isolate in a locked place a child who is in his or her care or permit

Prohibition

the child to be isolated in a locked place, except in accordance with this section and the regulations.

Secure treatment, secure custody and secure temporary detention

(2) Subsection (1) does not prohibit the routine locking at night of rooms in the premises of secure treatment programs or in places of secure custody and places of secure temporary detention under Part IV (Young Offenders).

Criteria for use of secure isolation

(3) A child may be placed in a secure isolation room where,

(a) in the service provider's opinion,

(i) the child's conduct indicates that the child is likely, in the immediate future, to cause serious property damage or to cause another person serious bodily harm, and

(ii) no less restrictive method of restraining the child is practicable; and

(b) where the child is less than twelve years of age, a Director gives permission for the child to be placed in a secure isolation room because of exceptional circumstances.

One hour limit

(4) A child who is placed in a secure isolation room shall be released within one hour unless the person in charge of the premises approves the child's longer isolation in writing and records the reasons for not restraining the child by a less restrictive method.

Continuous observation of child

(5) The service provider shall ensure that a child who is placed in a secure isolation room is continuously observed by a responsible person.

Review

(6) Where a child is kept in a secure isolation room for more than one hour, the person in charge of the premises shall review the child's isolation at prescribed intervals.

Release

(7) A child who is placed in a secure isolation room shall be released as soon as the person in charge is satisfied that the child is not likely to cause serious property damage or serious bodily harm in the immediate future.

Maximum periods

(8) In no event shall a child be kept in a secure isolation room for a period or periods that exceed an aggregate of eight hours in a given twenty-four hour period or an aggregate of twenty-four hours in a given week.

**122.** A person in charge of premises containing a secure isolation room shall review, Review of use of secure isolation

- (a) the need for the secure isolation room; and
- (b) the prescribed matters,

every three months from the date on which the secure isolation room is approved under subsection 120 (1), shall make a written report of each review to a Director and shall make such additional reports as are prescribed.

REVIEW TEAMS

**123.**—(1) A service provider who is approved under subsection 124 (1) shall establish an interdisciplinary review team with the duty of reviewing and approving or refusing the proposed use of intrusive procedures. Review team

(2) A review team shall consist of, Idem

- (a) persons employed by the service provider; and
- (b) one person who is not employed by the service provider and is approved by the Minister,

and may also include a legally qualified medical practitioner.

(3) Any three members of a review team may review and approve or refuse the proposed use of an intrusive procedure. Panel

(4) A review team shall make a report to the service provider concerning every review conducted under subsection (3) and subsection 127 (1) (review of certain recommended procedures). Report to service provider

(5) A review team shall make reports of its activities to the Minister at the prescribed intervals. Report to Minister

INTRUSIVE PROCEDURES

**124.**—(1) The Minister may approve a service provider for the use of the intrusive procedures specified in the approval and may set out in the approval any conditions and limitations to which it is subject. Approval by Minister

(2) The Minister may at any time revoke, suspend or amend an approval given under subsection (1) and shall give the affected service provider notice, with reasons, of the Minister's decision. Revocation, etc., of approval



Intrusive  
procedures  
restricted

**125.**—(1) No service provider shall use or permit the use of an intrusive procedure in respect of a child in the service provider's care, except in accordance with this section.

Exception

(2) Subsection (1) does not prohibit the use of restraints that are reasonably necessary for the secure transportation or transfer of a child who is detained or has been committed to custody under the *Young Offenders Act* (Canada) or to whom section 91 of Part IV (Young Offenders) (open custody) applies.

S.C. 1980-  
81-82-83,  
c. 110

When  
service  
provider  
may use  
or permit  
intrusive  
procedure

(3) A service provider who is approved under subsection 124 (1) may use or permit the use of an intrusive procedure in respect of a child in the service provider's care only,

- (a) if the intrusive procedure is specified in the approval;
- (b) in accordance with the conditions and limitations set out in the Minister's approval; and
- (c) with the approval, obtained in advance and not more than thirty days before the intrusive procedure is used, of the service provider's review team.

Criteria

(4) A review team shall not approve the use of an intrusive procedure in respect of a child unless,

- (a) if the child is sixteen years of age or more, the child consents to its use;
- (b) if the child is less than sixteen years of age, the child's parent or, where the child is in a society's lawful custody, the society consents to its use;
- (c) the child's behaviour warrants its use;
- (d) at least one less intrusive alternative has been attempted without success in improving the child's behaviour;
- (e) no other less intrusive alternative is practicable; and
- (f) there are reasonable grounds to believe that the procedure would improve the child's behaviour.

Idem

(5) A review team shall not approve the use of an intrusive procedure in respect of a child who is less than sixteen years of age or lacks capacity within the meaning of section 4 with-

out first considering the child's views and preferences, where they can be reasonably ascertained.

(6) Where,

Emergency

- (a) a service provider who is approved under subsection 124 (1) believes on reasonable grounds that delay in the use of an intrusive procedure in respect of a child in the service provider's care would cause the child or another person serious mental or physical harm;
- (b) the intrusive procedure is specified in the Minister's approval;
- (c) if the child is sixteen years of age or more, the child consents to the use of the intrusive procedure or apparently does not have capacity; and
- (d) if the child is less than sixteen years of age, the child's parent or, where the child is in a society's lawful custody, the society,
  - (i) consents to the use of the intrusive procedure, or
  - (ii) is not immediately available,

the service provider may use or permit the use of the intrusive procedure in respect of the child, in accordance with the conditions and limitations set out in the Minister's approval, during a period not exceeding seventy-two hours, without the approval of the review team, despite clause (3) (c).

(7) Where a service provider uses or permits the use of an intrusive procedure under subsection (6), the service provider shall seek the review team's approval as soon as possible, and in any event within seventy-two hours of the first use of the intrusive procedure, and shall not continue its use or permit its continued use in respect of the child unless the review team approves it.

Idem

#### PSYCHOTROPIC DRUGS

**126.**—(1) A service provider shall not administer or permit the administration of a psychotropic drug to a child in the service provider's care without,

Consents  
required  
for use of  
psychotropic  
drug

- (a) if the child is sixteen years of age or more, the child's consent; or

- (b) if the child is less than sixteen years of age, the consent of the child's parent or, where the child is in a society's lawful custody, the society's consent.

Idem

(2) A consent referred to in subsection (1) shall identify the psychotropic drug clearly and shall specify,

- (a) what condition the psychotropic drug is intended to alleviate;
- (b) the range of intended dosages;
- (c) any risks and possible side effects associated with the psychotropic drug, and how they vary with different dosages; and
- (d) the frequency with which and the period of time during which the psychotropic drug is to be administered.

Child's views  
and  
preferences

(3) A service provider shall not administer or permit the administration of a psychotropic drug to a child in the service provider's care who is less than sixteen years of age or lacks capacity within the meaning of section 4 without first considering the child's views and preferences, where they can be reasonably ascertained, except under subsection (4).

Emergency

(4) Where,

- (a) a service provider believes on reasonable grounds that,
  - (i) delay in the administration of a psychotropic drug to a child in the service provider's care would cause the child or another person serious mental or physical harm, and
  - (ii) no less restrictive course of action would prevent the harm;
- (b) if the child is sixteen years of age or more, the child apparently does not have capacity; and
- (c) if the child is less than sixteen years of age, the child's parent or, where the child is in a society's lawful custody, the society, is not immediately available,

the service provider may administer or permit the administration of the psychotropic drug to the child during a period not

exceeding seventy-two hours without the consent referred to in subsection (1).

(5) Where a service provider administers or permits the administration of a psychotropic drug under subsection (4), the service provider shall seek the consent referred to in subsection (1) as soon as possible, and in any event within seventy-two hours of the first administration of the psychotropic drug, and shall not continue its administration or permit its continued administration to the child unless the consent is given. Idem

ADDITIONAL DUTY OF REVIEW TEAMS

**127.**—(1) Where it is recommended that a child in the care of or regularly receiving services from a service provider who has established a review team undergo, Review of certain recommended procedures

- (a) non-therapeutic medical or chemical experimentation;
- (b) psychosurgery;
- (c) non-therapeutic sterilization; or
- (d) electro-convulsive therapy,

three members of the review team shall review the matter and advise the child's parent or, where the child is in a society's lawful custody, the society, and the service provider of the review team's opinion as to the appropriateness of the recommendation.

(2) One of the members of the review team acting under subsection (1) shall be a legally qualified medical practitioner. Panel to include medical practitioner

(3) No procedure referred to in subsection (1) shall be carried out in premises where an approved service or a service purchased by an approved agency is provided. Prohibition

PROFESSIONAL ADVISORY BOARD

**128.**—(1) The Minister may establish a Professional Advisory Board, composed of physicians and other professionals who, Professional Advisory Board

- (a) have special knowledge in the use of intrusive procedures and psychotropic drugs;

- (b) have demonstrated an informed concern for the welfare and interests of children; and
- (c) are not employed by the Ministry.

Chairman

(2) The Minister shall appoint one of the members of the Professional Advisory Board as its chairman.

Duties  
of  
Board

(3) The Professional Advisory Board shall, at the Minister's request,

- (a) advise the Minister on,
    - (i) prescribing procedures as intrusive procedures, and
    - (ii) making, amending, suspending and revoking approvals under section 124;
  - (b) investigate and review the use of intrusive procedures and psychotropic drugs and make recommendations to the Minister; and
  - (c) review the practices and procedures of service providers with respect to,
    - (i) secure isolation,
    - (ii) intrusive procedures, and
    - (iii) psychotropic drugs,
- and make recommendations to the Minister.

Request  
for  
review

**129.** Any person may request that the Minister refer the matter of the use of secure isolation or an intrusive procedure in respect of a child, or the administration of a psychotropic drug to a child, to the Professional Advisory Board for investigation and review.



## PART VII

## ADOPTION

**130.—(1)** In this Part,

Interpretation

- (a) “birth parent”, when used in reference to a child, means a person who is the child’s parent at the time of the child’s birth;
- (b) “licensee” means the holder of a licence issued under Part IX (Licensing) to place children for adoption;
- (c) “relative”, when used in reference to a child, means the child’s grandparent, great-uncle, great-aunt, uncle or aunt, whether by blood, marriage or adoption;
- (d) “spouse” has the same meaning as in Parts I and II of the *Human Rights Code, 1981*.

1981, c. 53

(2) Where a person is directed in this Part to make an order or determination in the best interests of a child, the person shall take into consideration those of the following circumstances of the case that he or she considers relevant:

Best  
interests  
of child

1. The child’s physical, mental and emotional needs, and the appropriate care or treatment to meet those needs.
2. The child’s physical, mental and emotional level of development.
3. The child’s cultural background.
4. The religious faith, if any, in which the child is being raised.
5. The importance for the child’s development of a positive relationship with a parent and a secure place as a member of a family.
6. The child’s relationships by blood or through an adoption order.
7. The importance of continuity in the child’s care and the possible effect on the child of disruption of that continuity.

8. The child's views and wishes, if they can be reasonably ascertained.
9. The effects on the child of delay in the disposition of the case.
10. Any other relevant circumstance.

Where child  
an Indian or  
native person

(3) Where a person is directed in this Part to make an order or determination in the best interests of a child and the child is an Indian or native person, the person shall take into consideration the importance, in recognition of the uniqueness of Indian and native culture, heritage and traditions, of preserving the child's cultural identity.

#### CONSENT TO ADOPTION

Interpretation

**131.**—(1) In this section, "parent", when used in reference to a child, means each of,

- (a) the child's mother;
- (b) an individual described in one of paragraphs 1 to 6 of subsection 8 (1) of the *Children's Law Reform Act*, unless it is proved on a balance of probabilities that he is not the child's natural father;
- (c) the individual having lawful custody of the child;
- (d) an individual who, during the twelve months before the child is placed for adoption under this Part, has demonstrated a settled intention to treat the child as a child of his or her family, or has acknowledged parentage of the child and provided for the child's support;
- (e) an individual who, under a written agreement or a court order, is required to provide for the child, has custody of the child or has a right of access to the child; and
- (f) an individual who has acknowledged parentage of the child in writing under section 12 of the *Children's Law Reform Act*,

R.S.O.1980,  
c. 68

R.S.O.1980,  
c. 68

but does not include a licensee or a foster parent.

Consent  
of parent,  
etc.

(2) An order for the adoption of a child who is less than sixteen years of age, or is sixteen years of age or more but has

not withdrawn from parental control, shall not be made without,

- (a) the written consent of every parent; or
- (b) where the child has been made a Crown ward under Part III (Child Protection), the written consent of a Director.

(3) A consent under clause (2) (a) shall not be given before the child is seven days old. Idem

(4) Where a child is being placed for adoption by a society or licensee, a consent under clause (2) (a) shall not be given until, Idem

- (a) the society or licensee has advised the parent of his or her right,
  - (i) to withdraw the consent under subsection (8),
  - (ii) to be informed, on his or her request, whether an adoption order has been made in respect of the child, and
  - (iii) to participate in the voluntary disclosure register under section 158; and
- (b) the society or licensee has given the parent an opportunity to seek counselling and independent legal advice with respect to the consent.

(5) Where,

Custody  
of child

- (a) a child is being placed for adoption by a society or licensee;
- (b) every consent required under subsection (2) has been given and has not been withdrawn under subsection (8); and
- (c) the twenty-one day period referred to in subsection (8) has expired,

the rights and responsibilities of the child's parents with respect to the child's custody, care and control are transferred to the society or licensee, until the consent is withdrawn under subsection 133 (1) (late withdrawal with leave of court) or an order is made for the child's adoption under section 140.

Consent of  
person to  
be adopted

(6) An order for the adoption of a person who is seven years of age or more shall not be made without the person's written consent.

Idem

(7) A consent under subsection (6) shall not be given until the person has had an opportunity to obtain counselling and independent legal advice with respect to the consent.

Withdrawal  
of consent

(8) A person who gives a consent under subsection (2) or (6) may withdraw it in writing within twenty-one days after the consent is given and where that person had custody of the child immediately before giving the consent, the child shall be returned to him or her as soon as the consent is withdrawn.

Dispensing  
with  
person's  
consent

(9) The court may dispense with a person's consent required under subsection (6) where the court is satisfied that,

- (a) obtaining the consent would cause the person emotional harm; or
- (b) the person is not able to consent because of a developmental handicap.

Consent of  
applicant's  
spouse

(10) An adoption order shall not be made on the application of a person who is a spouse without the written consent of the other spouse.

Consents by  
minors:  
role of  
Official  
Guardian

(11) Where a person who gives a consent under clause (2) (a) is less than eighteen years of age, the consent is not valid unless the Official Guardian is satisfied that the consent is fully informed and reflects the person's true wishes.

Affidavits  
of  
execution

(12) An affidavit of execution in the prescribed form shall be attached to a consent and a withdrawal of a consent under this section.

Form of  
foreign  
consents

(13) A consent required under this section that is given outside Ontario and whose form does not comply with the requirements of subsection (12) and the regulations is not invalid for that reason alone, if its form complies with the laws of the jurisdiction where it is given.

Dispensing  
with  
consent

**132.** The court may dispense with a consent required under section 131 for the adoption of a child, except the consent of the child or of a Director, where the court is satisfied that,

- (a) it is in the child's best interests to do so; and

- (b) the person whose consent is required has received notice of the proposed adoption and of the application to dispense with consent, or a reasonable effort to give the notice has been made.

**133.**—(1) The court may permit a person who gave a consent to the adoption of a child under section 131 to withdraw the consent after the twenty-one day period referred to in subsection 131 (8) where the court is satisfied that it is in the child's best interests to do so, and where that person had custody of the child immediately before giving the consent, the child shall be returned to him or her as soon as the consent is withdrawn.

Late  
withdrawal  
of consent

(2) Subsection (1) does not apply where the child has been placed with a person for adoption and remains in that person's care.

Exception:  
child  
placed for  
adoption

#### PLACEMENT FOR ADOPTION

**134.**—(1) A society shall make all reasonable efforts to secure the adoption of,

Duty of  
society

- (a) every child who has been made a Crown ward under Part III (Child Protection) and is in the society's care and custody; and
- (b) at the request of a Director or of another society, any child who has been made a Crown ward and is in that society's care and custody.

(2) No society shall place a child for adoption until,

When  
society  
may place  
child for  
adoption

- (a) any outstanding order of access to the child made under subsection 54 (1) of Part III has been terminated;
- (b) where the child is a Crown ward, the time for commencing an appeal of the order of Crown wardship or of an order under subsection 61 (1) of Part III (status review) has expired; or
- (c) where the child is a Crown ward, any appeal of an order referred to in clause (b) has been finally disposed of or abandoned,

whichever is the latest.

(3) Where a child to be placed for adoption is an Indian or a native person, the society shall give the child's band or

Where child  
an Indian or  
native person



native community thirty days written notice of its intention to place the child for adoption.

Only societies and licensees may place children, etc.

**135.**—(1) No person except a society or licensee shall,

- (a) place a child with another person for adoption; or
- (b) take, send or attempt to take or send a child who is a resident of Ontario out of Ontario to be placed for adoption.

Only societies, etc., may bring children into Ontario

(2) No person except a society or a licensee whose licence contains a term permitting the licensee to act under this subsection shall bring a child who is not a resident of Ontario into Ontario to be placed for adoption.

Licensee to notify Director of placement

(3) No licensee except a licensee exempted under subsection (5) shall,

- (a) place a child with another person for adoption; or
- (b) take, send or attempt to take or send a child who is a resident of Ontario out of Ontario to be placed for adoption,

without first notifying a Director of the proposed placement.

Director's approval required

(4) No person shall receive a child for adoption, except from a society or from a licensee exempted under subsection (5), without first receiving a Director's approval of the placement under clause 136 (2) (a).

Designation of licensee

(5) A Director may designate a licensee that is an agency as exempt from the requirements of subsections (3) and (4).

Placements to be registered

(6) A society or licensee who places a child with another person for adoption shall register the placement in the prescribed manner within thirty days of placing the child.

Idem: Director

(7) A Director who becomes aware of any placement for adoption of a child that has not been registered under subsection (6) shall forthwith register the placement in the prescribed manner.

Exception: family adoptions

(8) Subsections (1), (2), (3), (4), (6) and (7) do not apply to,

- (a) the placement for adoption of a child with the child's relative, the child's parent or a spouse of the child's parent; or

- (b) the taking or sending of a child out of Ontario for adoption by the child's relative, the child's parent or a spouse of the child's parent.

**136.**—(1) A licensee who notifies a Director of a proposed placement under subsection 135 (3) shall at the same time provide the Director with a report of an adoption homestudy of the person with whom placement is proposed, prepared by a person who, in the opinion of the Director or a local director, is qualified to make an adoption homestudy.

Adoption  
homestudy

(2) A Director who receives a report under subsection (1) shall consider it and, as soon as possible,

Director's  
approval

- (a) approve the proposed placement; or
- (b) refuse to approve the placement and give notice of the refusal to the licensee and the person with whom placement is proposed.

(3) Where a Director gives notice under clause (2) (b), the licensee and the person with whom placement is proposed are entitled to a hearing before the Board and sections 180, 182, 184 and 185 of Part IX (Licensing) apply with necessary modifications.

Right to  
hearing

(4) A Director shall not approve the proposed placement of a child outside Canada unless the Director is satisfied that a prescribed special circumstance justifies the placement.

Placement  
outside  
Canada

(5) A Director may approve a proposed placement under clause (2) (a) subject to any terms and conditions that the Director considers appropriate, including supervision of the placement by,

Terms and  
conditions

- (a) a specified society, licensee or person; or
- (b) in the case of a placement outside Ontario, a specified child protection agency recognized in the jurisdiction of the placement.

(6) Where a Director imposes a term or condition on an approval under subsection (5), the licensee and the person with whom placement is proposed are entitled to a hearing before the Board and sections 181, 182, 184 and 185 of Part IX (Licensing) apply with necessary modifications.

Right to  
hearing

**137.**—(1) Where a child is placed for adoption by a society or licensee, every order respecting access to the child

Access  
orders  
terminate

is terminated, except an order made under Part III (Child Protection).

No interference, etc., with child in placement

(2) Where a child has been placed for adoption by a society or licensee and no adoption order has been made, no person shall,

- (a) interfere with the child; or
- (b) for the purpose of interfering with the child, visit or communicate with the child or with the person with whom the child has been placed.

#### DIRECTOR'S REVIEW

Review by Director

#### **138.**—(1) Where,

- (a) a society makes a decision refusing to place a child with a person, including a foster parent who is caring for the child, for adoption; or
- (b) a society or licensee makes a decision to remove a child who has been placed with a person for adoption,

a Director may review the decision of the society or licensee and may,

- (c) confirm the decision, giving written reasons for doing so; or
- (d) rescind the decision and do anything further that the society or licensee may do under this Part with respect to the child's placement.

Idem

(2) A Director who reviews a decision under subsection (1) shall take into account the importance of continuity in the child's care.

Notice to Director

**139.**—(1) Where a child has been placed for adoption under this Part, no order for the child's adoption has been made and,

- (a) the person with whom the child is placed asks the society or licensee that placed the child to remove the child; or
- (b) the society or licensee proposes to remove the child from the person with whom the child was placed,

the society or licensee shall notify a Director.

(2) Where no order for a child's adoption has been made and a year has expired since, Idem

- (a) the earlier of the child's placement for adoption or the giving of the most recent consent under clause 131 (2) (a); or
- (b) the most recent review under subsection (3),

whichever is later, the society or licensee shall notify a Director, unless the child is a Crown ward.

(3) A Director who receives notice under subsection (1) or (2) shall review the child's status and may, in the child's best interests, Director's review

- (a) where the child is in the care of the person with whom the child was placed for adoption, confirm the child's placement or do anything the society or licensee that placed the child may do with respect to the child's placement or further placement;
- (b) where the child was placed for adoption by a licensee, direct the licensee to place the child in the care and custody of a specified society;
- (c) where the child is in the care, custody and control of a society, direct the society to bring the child before the court under Part III to determine whether the child is in need of protection;
- (d) where the child leaves or is removed from the care of the person with whom the child was placed for adoption, do anything the society or licensee that placed the child may do with respect to the child's further placement; or
- (e) where a parent who gave consent under clause 131 (2) (a) and had charge of the child at the time the consent was given agrees to resume the child's care and custody, direct the society or licensee that placed the child to return the child to the parent.

(4) Where a Director directs a society or licensee to return a child to a parent under clause (3) (e), the parent's consent under clause 131 (2) (a) shall be deemed to be withdrawn. Deemed withdrawal of consent

## ADOPTION ORDERS

Adoption  
of child

**140.**—(1) The court may make an order for the adoption of a child who is less than sixteen years of age, or is sixteen years of age or more but has not withdrawn from parental control, and,

- (a) has been placed for adoption by a society or licensee;
- (b) was placed for adoption before the 15th day of June, 1979; or
- (c) has been placed for adoption by a person other than a society or licensee and has resided with the applicant for at least two years,

in the child's best interests, on the application of the person with whom the child is placed.

Family  
adoption

(2) The court may make an order for the adoption of a child, in the child's best interests, on the application of,

- (a) a relative of the child;
- (b) the child's parent; or
- (c) the spouse of the child's parent.

Adoption  
of adult,  
etc.

(3) The court may make an order for the adoption of,

- (a) a person eighteen years of age or more; or
- (b) a child who is sixteen years of age or more and has withdrawn from parental control,

on another person's application.

Who may  
apply

(4) An application under this section may only be made,

- (a) by one individual; or
- (b) jointly, by two individuals who are spouses of one another.

Residency  
requirement

(5) The court shall not make an order under this section for the adoption of, or on the application of, a person who is not a resident of Ontario.



**141.** The court shall not make an order under section 140 on the application of a person who is less than eighteen years of age unless the court is satisfied that special circumstances justify making the order.

Where  
applicant  
a minor

**142.** Where the court has made an order,

Where  
order not  
to be made

- (a) dispensing with a consent under section 132; or
- (b) refusing to permit the late withdrawal of a consent under subsection 133 (1),

the court shall not make an order under section 140 until,

- (c) the time for commencing an appeal of the order has expired; or
- (d) any appeal of the order has been finally disposed of or abandoned,

whichever is later.

**143.—**(1) Where an application is made for an order for the adoption of a child under subsection 140 (1), a Director shall, before the hearing, file a written statement with the court indicating,

Director's  
statement

- (a) that the child has resided with the applicant for at least six months or, in the case of an application under clause 140 (1) (c), for at least two years and, in the Director's opinion, it would be in the child's best interests to make the order;
- (b) in the case of an application under clause 140 (1) (a), that for specified reasons it would be in the child's best interests, in the Director's opinion, to make the order although the child has resided with the applicant for less than six months; or
- (c) that the child has resided with the applicant for at least six months or, in the case of an application under clause 140 (1) (c), for at least two years and, in the Director's opinion, it would not be in the child's best interests to make the order,

and referring to any additional circumstances that the Director wishes to bring to the court's attention.

Local  
director  
may make  
statement

(2) Where a child was placed by a society and has resided with the applicant for at least six months, the statement under subsection (1) may be made and filed by the local director.

Amendment  
of statement,  
etc.

(3) The Director or local director, as the case may be, may amend the statement referred to in subsection (1) at any time and may attend at the hearing and make submissions.

Where  
recommen-  
dation  
negative

(4) Where the statement under subsection (1) indicates that, in the Director's or local director's opinion, it would not be in the child's best interests to make the order, a copy of the statement shall be filed with the court and served on the applicant at least thirty days before the hearing.

Report of  
child's  
adjustment

(5) The statement under subsection (1) shall be based on a report of the child's adjustment in the applicant's home, prepared by,

(a) the society that placed the child or has jurisdiction where the child is placed; or

(b) a person approved by the Director or local director.

Family  
adoptions:  
court may  
require  
statement

(6) Where an application is made for an order for the adoption of a child under subsection 140 (2), the court may order that subsections (1), (3), (4) and (5) shall apply to the application.

Place of  
hearing

**144.**—(1) An application for an adoption order shall be heard and dealt with in the county or district in which,

(a) the applicant; or

(b) the person to be adopted,

resides at the time the application is filed.

Transfer of  
proceeding

(2) Where the court is satisfied at any stage of an application for an adoption order that there is a preponderance of convenience in favour of conducting it in another county or district, the court may order that it be transferred to that other county or district and be continued as if it had been commenced there.

Hearing  
in private

**145.**—(1) An application for an adoption order shall be heard and dealt with in the absence of the public.

Court  
files  
private

(2) No person shall have access to the court file concerning an application for an adoption order, except,

- (a) the court and authorized court employees;
- (b) the parties and their solicitors and agents; and
- (c) a Director and a local director.

(3) Where an application for an adoption order is not heard within twelve months of the day on which the applicant signed it, Stale applications

- (a) the court shall not hear the application unless the court is satisfied that it is just to do so; and
- (b) the applicant may make another application.

(4) No person, No right to notice

- (a) who has given a consent under clause 131 (2) (a) and has not withdrawn it;
- (b) whose consent has been dispensed with under section 132; or
- (c) who is a parent of a Crown ward who is placed for adoption,

is entitled to receive notice of an application under section 140.

**146.**—(1) The court may, on its own initiative, summon a person to attend before it, testify and produce any document or thing, and may enforce obedience to the summons as if it had been issued under the *Family Law Reform Act*. Power of court

R.S.O.1980,  
c. 152

(2) The court shall not make an order for the adoption of a child under subsection 140 (1) or (2) unless the court is satisfied that, Duty of court

- (a) every person who has given a consent under section 131 understands the nature and effect of the adoption order; and
- (b) every applicant understands and appreciates the special role of an adopting parent.

(3) Where an application is made for an order for the adoption of a child under subsection 140 (1) or (2), the court shall, Participation of child

- (a) inquire into the child's capacity to understand and appreciate the nature of the application; and

- (b) consider the child's views and wishes, if they can be reasonably ascertained,

and where it is practical to do so shall hear the child.

Participation  
of adult, etc.

(4) Where an application is made for an order for the adoption of a person under subsection 140 (3), the court shall consider the person's views and wishes and, on request, hear the person.

Change of  
name

**147.**—(1) Where the court makes an order under section 140, the court may, at the request of the applicant or applicants and, where the person adopted is twelve years of age or more, with the person's written consent,

- (a) change the person's surname to a surname that the person could have been given if he or she had been born to the applicant or applicants; and
- (b) change the person's given name.

When child's  
consent not  
required

(2) A child's consent to a change of name under subsection (1) is not required where the child's consent was dispensed with under subsection 131 (9).

#### INTERIM ORDERS

Interim  
order

**148.**—(1) Where an application is made for an order for the adoption of a child under subsection 140 (1) or (2), the court, after considering the statement made under subsection 143 (1), may postpone the determination of the matter and make an interim order in the child's best interests placing the child in the applicant's care and custody for a specified period not exceeding one year.

Terms  
and  
conditions

(2) The court may make an order under subsection (1) subject to any terms and conditions that the court considers appropriate respecting,

- (a) the child's maintenance and education;
- (b) supervision of the child; and
- (c) any other matter the court considers advisable in the child's best interests.

Not an  
adoption  
order

(3) An order under subsection (1) is not an adoption order.

(4) Sections 131 and 132 (consents to adoption) apply to an order under subsection (1) with necessary modifications.

Consents  
required

(5) Where an applicant takes up residence outside Ontario after obtaining an order under subsection (1), the court may nevertheless make an adoption order under subsection 140 (1) or (2) where the statement made under subsection 143 (1) indicates that, in the Director's or local director's opinion, it would be in the child's best interests to make the order.

Departure  
from  
Ontario

**149.** An adoption order under subsection 140 (1) or (2) or an interim custody order under subsection 148 (1) may be made in respect of a person who is the subject of an earlier adoption order.

Successive  
adoption  
orders

#### APPEALS

**150.—**(1) An appeal from a court's order under section 140 may be made to the District Court by,

Appeal:  
adoption  
order

(a) the applicant for the adoption order; and

(b) the Director or local director who made the statement under subsection 143 (1).

(2) An appeal from a court's order under section 132 dispensing with a consent may be made to the District Court by,

Idem:  
dispensing  
with consent

(a) the persons referred to in subsection (1); and

(b) the person whose consent was dispensed with.

(3) An appeal from a court's order under subsection 133 (1) permitting the late withdrawal of a consent may be made to the District Court by,

Idem:  
late  
withdrawal  
of consent

(a) the persons referred to in subsection (1); and

(b) the person who gave the consent.

(4) No extension of the time for an appeal shall be granted.

No  
extension  
of time  
for appeal

(5) An appeal under this section shall be heard in the county or district in which the order appealed from was made.

Place of  
hearing

(6) An appeal under this section shall be heard in the absence of the public.

Hearing  
in private



## EFFECT OF ADOPTION ORDER

Order  
final

**151.** An adoption order under section 140 is final and irrevocable, subject only to section 150 (appeals), and shall not be questioned or reviewed in any court by way of injunction, declaratory judgment, *certiorari*, *mandamus*, prohibition, *habeas corpus* or application for judicial review.

Interpretation

**152.**—(1) In this section, “adopted child” means a person who was adopted in Ontario.

Status  
of adopted  
child

(2) For all purposes of law, as of the date of the making of an adoption order,

- (a) the adopted child becomes the child of the adopting parent and the adopting parent becomes the parent of the adopted child; and
- (b) the adopted child ceases to be the child of the person who was his or her parent before the adoption order was made and that person ceases to be the parent of the adopted child, except where the person is the spouse of the adopting parent,

as if the adopted child had been born to the adopting parent.

How  
relationships  
determined

(3) The relationship to one another of all persons, including the adopted child, the adopting parent, the kindred of the adopting parent, the parent before the adoption order was made and the kindred of that former parent shall for all purposes be determined in accordance with subsection (2).

Reference  
in will or  
other  
document

(4) In any will or other document made at any time before or after the day this section comes into force, and whether the maker of the will or document is alive on that day or not, a reference to a person or group or class of persons described in terms of relationship by blood or marriage to another person shall be deemed to refer to or include, as the case may be, a person who comes within the description as a result of an adoption, unless the contrary is expressed.

Application  
of section

(5) This section applies and shall be deemed always to have applied with respect to any adoption made under any Act heretofore in force, but not so as to affect,

- (a) any interest in property or right of the adopted child that has indefeasibly vested before the date of the making of an adoption order; and

- (b) any interest in property or right that has indefeasibly vested before the day this section or a predecessor of this section comes into force.

(6) Subsections (2) and (3) do not apply for the purposes of the laws relating to incest and the prohibited degrees of marriage to remove a person from a relationship that would have existed but for those subsections. Exception

**153.** An adoption effected according to the law of another jurisdiction, before or after the day this section comes into force, has the same effect in Ontario as an adoption under this Part. Effect of foreign adoption

**154.** Where an order for the adoption of a child has been made under this Part no court shall make an order under this Part for access to the child by, No order for access by birth parent, etc.

- (a) a birth parent; or

- (b) a member of a birth parent's family.

#### RECORDS, CONFIDENTIALITY AND DISCLOSURE

**155.** At the request of a person who gave a consent to adoption under clause 131 (2) (a) or whose consent required under that clause was dispensed with under section 132, any society or the licensee that placed the child for adoption shall inform the person whether an order has been made for the child's adoption. Parent to be informed on request

**156.—**(1) In this section, "court" includes the District Court. Interpretation

(2) Subject to subsections (3) and 158 (7), the documents used upon an application for an adoption order under this Part or a predecessor of this Part shall be sealed up together with a certified copy of the original order and filed in the office of the court by the proper officer of the court and shall not be open for inspection except upon an order of the court or the written direction of a Director. Papers to be sealed up

(3) Within thirty days after the making of an adoption order under this Part, the proper officer of the court shall cause to be made a sufficient number of certified copies thereof under the seal of the proper certifying authority and shall transmit, Transmission of order

- (a) the original order to the adopting parent;

- (b) one certified copy to a Director;
- (c) one certified copy to the Registrar General, or, where the adopted child was born outside Ontario, two certified copies to the Registrar General; and
- (d) where the adopted child is a member of a band, one certified copy to the Registrar under the *Indian Act* (Canada).

R.S.C. 1970,  
c. 1-6

Adoption  
information  
confidential

**157.**—(1) Despite the provision of any other Act, no person shall inspect, remove, alter or permit the inspection, removal or alteration of information that relates to an adoption and is kept,

- (a) by the Ministry;
- (b) by a society or licensee; or
- (c) in the register maintained under section 158,

or disclose or permit the disclosure of such information that the person obtained from the records of the Ministry, the records of a society or licensee, or the register maintained under section 158.

Exceptions

(2) Subsection (1) does not apply to,

- (a) the inspection or disclosure of information in accordance with section 158;
- (b) the inspection by or disclosure to the Minister, a Director or an employee of the Ministry who has a Director's written authority, of information kept by the Ministry or a society or licensee;
- (c) the inspection by or disclosure to an employee of a society or licensee, of information kept by the society or licensee;
- (d) the disclosure of information of a prescribed class to a person whose access to the information, in a Director's opinion, is necessary to protect any person's health; or
- (e) the release by a Director of a copy of an adoption order to,
  - (i) the adopting parent, or

- (ii) a governmental authority that requires the copy to issue a birth certificate, passport or visa.

#### VOLUNTARY DISCLOSURE REGISTER

#### **158.**—(1) In this section,

Interpretation

- (a) “adopted child” means a person who was adopted in Ontario;
- (b) “Director” means the person appointed under subsection (2);
- (c) “register” means the register maintained under subsection (3).

(2) The Minister may appoint an employee of the Ministry as Director for the purposes of this section. Director

(3) The Director shall maintain a register for the purposes of this section. Voluntary disclosure register

(4) An adopted child who has attained the age of eighteen years and a birth parent of an adopted child may each apply to a society or to the Director to be named in the register. Who may apply to be named in register

(5) A society that receives an application under subsection (4) shall forthwith send the application to the Director. Society to notify Director

(6) Upon receiving an application made under subsection (4), the Director shall, Duty of Director

(a) enter the applicant’s name in the register; and

(b) determine,

(i) where the applicant is an adopted child, whether a birth parent of the applicant is named in the register, or

(ii) where the applicant is a birth parent of an adopted child, whether the adopted child is named in the register.

(7) Where the Director, Idem

(a) determines, subject to subsection (10), that an applicant’s birth parent or an adopted child whose



birth parent is the applicant, as the case may be, is named in the register; and

(b) obtains, subject to subsections (8), (9) and (10),

(i) the written consent of every person who became the adopted child's parent by an adoption order, and

(ii) written confirmation of the consent of the applicant and the birth parent or adopted child, as the case may be,

to the disclosure of information under this section,

the Director shall obtain from the court copies of the documents referred to in subsection 156 (2) and promptly,

(c) forward the information in those documents and in the register that relates to the adoption to a society that the Director considers appropriate; or

(d) make the information in those documents and in the register that relates to the adoption available, with counselling, to the adopted child and to the birth parent, if living.

Where  
adopting  
parent's  
consent not  
required

(8) The consent of an adopting parent referred to in subclause (7) (b) (i) is not required where,

(a) the adopting parent is deceased;

(b) the adopting parent has been declared a mentally incompetent person under the *Mental Incompetency Act*; or

(c) after the adopted child's adoption by the adopting parent, the child was made a Crown ward under Part III (Child Protection) and the court did not make an order for access by the adopting parent.

R.S.O.1980,  
c. 264

Where birth  
parent  
mentally  
incompetent

(9) Where the birth parent has been declared a mentally incompetent person under the *Mental Incompetency Act*, the consent of the birth parent's committee shall be deemed to be the confirmation of the birth parent's consent referred to in subclause (7) (b) (ii).

Disclosure  
where birth  
parent or  
adopted child  
deceased

(10) Where the Director determines that the applicant's birth parent or the adopted child whose birth parent is the applicant, as the case may be, is deceased, the Director may



release information under clause (7) (c) or (d) although the conditions set out in clause (7) (a) and subclause (7) (b) (ii) are not satisfied.

(11) A society that receives information under subsection (7) shall promptly make it available, with counselling, to the adopted child and to the birth parent, if living.

Duty of  
society

(12) A society shall provide guidance and counselling to birth parents and adopted children who are named or may wish to be named in the register.

Idem:  
society

(13) A person may,

Information  
in register  
confidential

- (a) inspect, remove, alter or permit the inspection, removal or alteration of information kept in the register; or
- (b) disclose or permit the disclosure of information that the person obtained from the register otherwise than under clause (7) (d) or subsection (11),

only with the Director's written authority.

(14) An adopted child and a birth parent who receive information under clause (7) (d) or subsection (11) may disclose it freely.

Disclosure  
by adopted  
child and  
birth parent

#### OFFENCES

**159.** No person, whether before or after a child's birth, shall give, receive or agree to give or receive a payment or reward of any kind in connection with,

No payments  
for adoption

- (a) the child's adoption or placement for adoption;
- (b) a consent under section 131 to the child's adoption; or
- (c) negotiations or arrangements with a view to the child's adoption,

except for,

- (d) the prescribed expenses of a licensee, or such greater expenses as are approved by a Director;
- (e) proper legal fees and disbursements; and

- (f) a subsidy paid by an approved agency or by the Minister to an adopting parent or to a person with whom a child is placed for adoption.

Offence

**160.**—(1) A person who contravenes subsection 135 (1), (2) or (3) (placement for adoption) and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation is guilty of an offence, whether an order is subsequently made for the child's adoption or not, and on conviction is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than two years, or to both.

Idem

(2) A person who contravenes subsection 135 (4) (receiving child) is guilty of an offence and on conviction is liable to a fine of not more than \$2,000 or to imprisonment for a term of not more than two years, or to both.

Idem

(3) A person who contravenes subsection 137 (2) (interference with child) is guilty of an offence and on conviction is liable to a fine of not more than \$1,000 or to imprisonment for a term of not more than one year, or to both.

Idem

(4) A person who contravenes section 159 and a director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention by the corporation is guilty of an offence and on conviction is liable to a fine of not more than \$5,000 or to imprisonment for a term of not more than three years, or to both.

Limitation  
period

(5) A proceeding under subsection (1), (2) or (4) shall not be commenced after the expiration of two years after the date on which the offence was, or is alleged to have been, committed.

#### INJUNCTION

Injunction

**161.**—(1) The Supreme Court may grant an injunction to restrain a person from contravening subsection 137 (2), on the society's or licensee's application.

Variation,  
etc.

(2) The Supreme Court may vary or terminate an order made under subsection (1), on any person's application.

## PART VIII

## CONFIDENTIALITY OF AND ACCESS TO RECORDS

**162.** In this Part,

Interpretation

- (a) “family”, when used in reference to a person, means,

(i) the person’s parents and children, and

(ii) the person’s spouse within the meaning of Part II of the *Family Law Reform Act*;

R.S.O.1980,  
c. 152

- (b) “record”, when used in reference to a person, means all recorded information, regardless of physical form or characteristics, that,

(i) relates to the person,

(ii) is recorded in connection with the provision of an approved service, or a service purchased by an approved agency, to the person or a member of the person’s family, and

(iii) is under the control of a service provider.

**163.—**(1) This Part does not apply to information recorded before the day this Part comes into force.

Exception:  
information  
in existing  
records

- (2) This Part does not apply to a record,

Exception:  
certain kinds  
of records

- (a) obtained by means of an order made under subsection 70 (3) of Part III (child abuse investigation);

- (b) in the register maintained under subsection 71 (5) of Part III (child abuse register);

- (c) that relates to the adoption of a child under Part VII;

- (d) in the register maintained under subsection 158 (3) of Part VII (voluntary disclosure register);

- (e) that relates to a patient and whose disclosure without the patient’s consent would contravene a regulation made under the *Health Disciplines Act*;

R.S.O.1980,  
c. 196

R.S.O. 1980,  
c. 262

- (f) that is a clinical record within the meaning of subsection 29 (1) of the *Mental Health Act*;

R.S.O. 1980,  
c. 410

- (g) that is a medical record kept by a hospital that is approved under the *Public Hospitals Act*.

#### DISCLOSURE OF RECORDS

Prohibition

**164.**—(1) No service provider or employee of a service provider shall disclose a person's record to any person, except in accordance with section 165 (disclosure with consent), 166 (disclosure without consent) or 167 (access by subject and parents) or subsection 171 (4) (review by Board).

Exception

(2) Subsection (1) does not prevent the disclosure of a person's record that is,

- (a) required or permitted by,

- (i) another Act or a regulation made under another Act, or

- (ii) an order of a court; or

S.C. 1980-  
81-82-83,  
c. 110

- (b) permitted by the *Young Offenders Act* (Canada).

Consent to  
disclosure:  
child under  
sixteen

**165.**—(1) A service provider may disclose the record of a child under the age of sixteen years, with the written consent of the child's parent or, where the child is in a society's lawful custody, the society's written consent.

Exception:  
child's  
counselling  
records

(2) Subsection (1) does not apply to a record created in connection with the provision of counselling services to a child under section 28 of Part II (Voluntary Access to Services), which may be disclosed only with the child's written consent.

Consent to  
disclosure:  
person over  
sixteen

(3) A service provider may disclose the record of a person who is sixteen years of age or older with that person's written consent.

Requirements  
for consent

(4) A consent given under subsection (1), (2) or (3) to the disclosure of a person's record shall specify,

- (a) what information is to be disclosed;

- (b) the purpose of the disclosure;

- (c) to whom the record is to be disclosed;

- (d) whether the consent authorizes the further disclosure of the record by the person referred to in clause (c), and, if so, to whom and for what purposes; and
- (e) the period of time during which the consent remains effective, unless revoked.

(5) The revocation of a consent given under subsection (1), (2) or (3) is effective when it is delivered to the service provider in writing or the service provider otherwise obtains actual notice of it.

When  
revocation  
of consent  
effective

**166.**—(1) A service provider may disclose a person's record without any consent referred to in section 165,

Disclosure  
without  
consent

- (a) to persons who provide approved services as employees or agents of the service provider;
- (b) to a foster parent, if the person is a child who is in the foster parent's care;
- (c) to employees, officers and professional advisors of the service provider who require access to the person's record for the performance of their duties;
- (d) to a society, if the person is a child who is in the society's care under,
  - (i) an order made under Part III (Child Protection), or
  - (ii) a temporary care agreement or special needs agreement made under Part II (Voluntary Access to Services), unless the agreement provides otherwise;
- (e) to a peace officer, if the service provider believes on reasonable grounds that,
  - (i) failure to disclose the person's record is likely to cause the person or another person physical or emotional harm, and
  - (ii) the need for disclosure is urgent;
- (f) to a person who is providing medical treatment to the person whose record is concerned, if the service provider believes on reasonable grounds that,



(i) failure to disclose the record is likely to cause the person whose record is concerned physical or emotional harm, and

(ii) the need for disclosure is urgent; or

(g) to a review team for the purposes of section 69 of Part III (Child Protection).

Idem:  
research

(2) A service provider may, with a Director's written approval obtained in accordance with the regulations, disclose a person's record to a person engaged in research, but that person shall not,

(a) use or communicate information from the record for any purpose except research, academic pursuits or the compilation of statistical data; or

(b) communicate any information that may have the effect of identifying a person whose record is disclosed.

Mandatory  
disclosure

(3) A service provider shall disclose a person's record without any consent referred to in section 165,

(a) to a program supervisor; or

(b) to a Director,

who requests its disclosure.

Prohibition

(4) A program supervisor or Director shall not use or communicate information from a person's record obtained under subsection (3) for any purpose outside the scope of his or her duties.

Notice of  
disclosure  
without  
consent

(5) A service provider who discloses a person's record under clause (1) (e) or (f) shall promptly give written notice of the disclosure to the person whose record was disclosed.

#### ACCESS TO RECORDS

Right of  
access to  
personal  
records

**167.—**(1) Subject to subsection (2) and section 168, a person who is twelve years of age or older has a right to and shall on request be given access to,

(a) his or her own records;

(b) the records of his or her child who is under the age of sixteen years; and

- (c) the records of a child who is in his or her lawful custody or charge and is under the age of sixteen years.

(2) Clauses (1) (b) and (c) do not apply to a record created in connection with the provision of counselling services to a child under section 28 of Part II (Voluntary Access to Services), which may be disclosed to the child's parent only with the child's written consent.

Exception:  
child's  
counselling  
records

(3) Any parent of a child, if the child is under the age of sixteen years, may designate specific information that is contained in the child's record and relates to the parent as information that shall not be disclosed to the child, and the service provider shall not disclose the designated information to the child.

Restriction  
by parent,  
etc.

(4) The consent of a child's parent is not required for the child's access to a record under subsection (1).

Child's  
access to  
own records

**168.**—(1) A service provider may refuse to give a person referred to in subsection 167 (1) access to all or part of his or her record where the person is a child under the age of sixteen years and the service provider is of the opinion that access to all or part of the record would cause the child physical or emotional harm.

Where  
access  
may be  
refused

(2) A service provider may withhold from a person referred to in subsection 167 (1) the name of another person and other information relating to that other person where the service provider is of the opinion that disclosure is likely to result in physical or emotional harm to that other person.

Information  
that may be  
withheld

(3) A service provider may withhold from a person referred to in subsection 167 (1) the name of an individual who has provided information in the person's record but is not engaged in providing services.

Idem:  
informants

(4) A service provider may withhold from a person referred to in subsection 167 (1) the contents of a medical, emotional, developmental, psychological, educational or social assessment performed by a person who is not employed by the service provider, but may not withhold that person's name.

Idem:  
assessments

**169.**—(1) Where a person referred to in subsection 167 (1) requests access to a record, the service provider shall, within thirty days of receiving the request,

Duty of  
service  
provider

- (a) give the person access to the record;

- (b) notify the person that the service provider refuses to give him or her access to part of the record, stating the reasons for the refusal, and give the person access to the rest of the record;
- (c) notify the person that the service provider refuses to give him or her access to the record, stating the reasons for the refusal; or
- (d) notify the person that this Part does not apply to the record or that the record does not exist, if that is the case.

Notice of  
right of  
review

(2) A notice of a refusal of access under clause (1) (b) or (c) shall contain a statement of the person's right to request a review of the matter under subsection 171 (1).

Right to  
have  
record  
corrected

**170.**—(1) A person who has a right to access to a record under subsection 167 (1) also has a right to have errors or omissions in the record corrected.

Duty of  
service  
provider

(2) Where a person referred to in subsection (1) requests that a service provider correct an error or omission in a record, the service provider shall, within thirty days of receiving the request,

- (a) make the correction as requested, and give notice of the correction to every person to whom the service provider has disclosed the record;
- (b) notify the person that the service provider refuses to make the correction as requested, stating the reasons for the refusal, and note the request and response on the record; or
- (c) notify the person that this Part does not apply to the record or that the record does not exist, if that is the case.

Notice of  
right of  
review

(3) A notice of a refusal to make a correction under clause (2) (b) shall contain a statement of the person's right to request a review of the matter under subsection 171 (1).

#### REVIEW

Right to  
review:  
refusal of  
access or  
correction

**171.**—(1) A person referred to in subsection 167 (1) or 170 (1) whose request for access to or correction of a record is refused in whole or in part may, within twenty days of receiving notice of the refusal, request that the Board review the matter.

(2) A person who believes that a service provider may have disclosed his or her record without authority may, within twenty days of becoming aware of the possible unauthorized disclosure, request that the Board review the matter.

Idem:  
unauthorized  
disclosure

(3) Where the Board receives notice of a request for review under subsection (1) or (2), it shall review the matter, following the prescribed procedures, and may do so by holding a hearing.

Duty of  
Board

(4) In conducting a review requested under subsection (1) or (2), the Board may examine the record in question.

Board may  
examine  
record

(5) On completing a review requested under subsection (1), the Board may,

Decision  
of Board

- (a) order the service provider to give the person access to all or part of the record;
- (b) order the service provider to make a correction to the record and give the notice referred to in clause 170 (2) (a); or
- (c) if it is satisfied that the refusal appealed from is justified, confirm the refusal,

and shall provide a copy of its decision to the person who requested the review, the service provider and the Minister.

(6) On completing a review requested under subsection (2), the Board,

Idem

- (a) shall, unless it is satisfied that no disclosure or no unauthorized disclosure of the person's record took place, declare that the disclosure was unauthorized;
- (b) may order the service provider to change its procedures for the maintenance and disclosure of persons' records, or to desist from a particular disclosure practice; and
- (c) where it is satisfied that an unauthorized disclosure took place, may recommend to the Minister that the service provider's approval under Part I (Flexible Services), if any, be revoked or, where the service provider is a licensee, that the licence be revoked under Part IX (Licensing),

and shall provide a copy of its decision to the person who requested the review, the service provider and the Minister.



## GENERAL

Access, etc.,  
to be noted  
on record

**172.**—(1) Every disclosure of all or part of a person's record and every correction to a person's record shall be noted on and forms part of the record.

Exception

(2) Subsection (1) does not apply to routine use of a person's record by a service provider and the service provider's employees or, where the service provider is the Minister, the Minister's employees engaged in providing services.

Protection  
from  
liability  
for  
disclosure

**173.** Where a service provider discloses a person's record in accordance with this Part, no action or other proceeding shall be instituted against the service provider or anyone acting under the service provider's authority,

(a) if this Part requires the disclosure; or

(b) if this Part permits the disclosure and the service provider has reasonable grounds to believe the information contained in the record to be accurate.

Code of  
record-  
keeping  
procedures

**174.**—(1) Every service provider shall establish and follow a written code of procedure for the creation, maintenance and disclosure of persons' records.

Idem

(2) A code of procedure referred to in subsection (1) shall contain,

(a) a description of the types of information that may be recorded and the purposes for which information may be recorded;

(b) a requirement that information, wherever possible, be collected from or confirmed by the person to whom it relates;

(c) a requirement that no more information be recorded than is actually necessary for the provision of the service in question; and

(d) the prescribed provisions.

Retention,  
storage and  
destruction  
schedules

(3) Every service provider shall retain, store and destroy persons' records in accordance with the prescribed schedules.



## PART IX

## LICENSING

**175.** In this Part,

Interpretation

## (a) “children’s residence” means,

(i) a parent model residence where five or more children not of common parentage, or

(ii) a staff model residence where three or more children not of common parentage,

live and receive residential care, and includes a foster home or other home or institution that is supervised or operated by a society, but does not include,

(iii) a house licensed under the *Private Hospitals Act*, R.S.O. 1980, c. 389(iv) a day nursery as defined in the *Day Nurseries Act*, R.S.O. 1980, c. 111(v) a recreational camp under the *Health Protection and Promotion Act, 1983*, 1983, c. 10(vi) a home for special care under the *Homes for Special Care Act*, R.S.O. 1980, c. 202(vii) a school or private school as defined in the *Education Act*, R.S.O. 1980, c. 129

(viii) a hostel intended for short term accommodation,

(ix) a hospital that receives financial aid from the Government of Ontario, or

(x) a group home or similar facility that receives financial assistance from the Minister of Correctional Services but receives no financial assistance from the Minister under this Act;

## (b) “non-profit agency” means a corporation without share capital that has objects of a charitable nature and,

(i) to which Part III of the *Corporations Act* applies, or R.S.O. 1980, c. 95

- (ii) that is incorporated by or under a general or special Act of the Parliament of Canada;
- (c) “parent model residence” means a building, group of buildings or part of a building where not more than two adult persons live and provide care for children on a continuous basis;
- (d) “staff model residence” means a building, group of buildings or part of a building where adult persons are employed to provide care for children on the basis of scheduled periods of duty.

#### WHERE LICENCE REQUIRED

Licence  
required  
to operate  
children's  
residence,  
etc.

#### **176.—(1) No person shall,**

- (a) establish, operate or maintain a children's residence; or
- (b) provide, directly or indirectly, residential care for three or more children not of common parentage in places that are not children's residences,

except under the authority of a licence issued by a Director under this Part.

Idem:  
placement  
for  
adoption

(2) No person other than a society shall place a child for adoption, except under the authority of a licence issued by a Director under this Part.

Issuing  
licence

(3) Subject to section 178, a person who applies for a licence in accordance with this Part and the regulations and pays the prescribed fee is entitled to be issued a licence by a Director, subject to any terms and conditions imposed by the Director.

Idem

(4) Despite subsection (3),

- (a) a licence shall not be issued to a partnership or association of persons; and
- (b) a licence to place a child for adoption shall only be issued to an individual or a non-profit agency.

Renewal  
of licence

(5) Subject to section 179, a licensee who applies for renewal of the licence in accordance with this Part and the regulations and pays the prescribed fee is entitled to have the licence renewed by a Director, subject to any terms and conditions imposed by the Director.

(6) Where an applicant for a licence or renewal of a licence does not meet all the requirements for the issuing or renewal of the licence and requires time to meet them, a Director may, subject to such terms and conditions as the Director may prescribe, issue a provisional licence for the period that the Director considers necessary to give the applicant time to meet the requirements.

Provisional  
licence or  
renewal

(7) A licence is not transferable.

Not  
transferable

(8) No licensee shall place a child in a residential placement except in accordance with this Act and the regulations.

Placements  
must be in  
accord with  
Act and  
regulations

#### POWERS OF PROGRAM SUPERVISOR

**177.**—(1) For the purpose of ensuring compliance with this Act and the regulations a program supervisor may, at all reasonable times, upon producing proper identification, enter,

Powers of  
program  
supervisor

- (a) the premises of a licensee;
- (b) a children's residence; or
- (c) a place where a child receives residential care,

and may inspect the facilities, the services provided, the books of account and the records relating to the services, and make copies of those books and records or remove them from the premises to copy them as may be reasonably required.

(2) No person shall hinder, obstruct or attempt to hinder or obstruct a program supervisor in the performance of the program supervisor's duties or knowingly give false information about the premises or services to a program supervisor.

Offence

(3) No licensee or person in charge of premises referred to in clause (1) (a), (b) or (c) shall refuse to give a program supervisor access to the books and records referred to in subsection (1) or refuse to give a program supervisor information about the premises or services that the program supervisor reasonably requires.

Idem

(4) A program supervisor shall exercise the power of entry set out in subsection (1) in accordance with the regulations.

Regulations  
re exercise  
of power of  
entry

#### REFUSAL AND REVOCATION

**178.** A Director may refuse to issue a licence where, in the Director's opinion,

Grounds for  
refusal

- (a) the applicant or an employee of the applicant, or, where the applicant is a corporation, an officer or director of the corporation is not competent to carry on the activity for which the licence is required in a responsible manner in accordance with this Act and the regulations;
- (b) the past conduct of the applicant or an employee of the applicant or, where the applicant is a corporation, of an officer or director of the corporation, affords reasonable grounds for belief that the activity for which the licence is required will not be carried on in a responsible manner in accordance with this Act and the regulations; or
- (c) the premises in which the applicant proposes to establish, operate and maintain a children's residence or to provide residential care, as the case may be, do not comply with the requirements of this Part and the regulations.

Refusal to  
renew;  
revocation

**179.** A Director may refuse to renew or may revoke a licence where, in the Director's opinion,

- (a) the licensee or an employee of the licensee, or where the licensee is a corporation, an officer or director of the corporation has contravened or has knowingly permitted a person under his or her control or direction or associated with him or her to contravene,
  - (i) this Act or the regulations,
  - (ii) another Act, or the regulations made under another Act, that applies to the activity for which the licence is required, or
  - (iii) a term or condition of the licence;
- (b) the premises where the children's residence is located or the residential care is provided do not comply with the requirements of this Part and the regulations;
- (c) the activity for which the licence is required is carried on in a manner that is prejudicial to the children's health, safety or welfare;
- (d) a person has made a false statement in the application for the licence or for its renewal, or in a

report or document required to be furnished by this Act or the regulations, or by another Act or the regulations made under another Act that applies to the activity for which the licence is required; or

- (e) a change has occurred in the employees, officers or directors of the applicant that would, if the applicant were applying for the licence in the first instance, afford grounds under clause 178 (b) for refusing to issue the licence.

#### HEARING BY BOARD

**180.**—(1) Where a Director proposes to refuse to issue a licence under section 178 or to refuse to renew or to revoke a licence under section 179, the Director shall cause notice of the proposal, together with written reasons, to be served on the applicant or licensee.

Notice of  
proposal

(2) A notice under subsection (1) shall inform the applicant or licensee that he or she is entitled to a hearing by the Board if he or she mails or delivers to the Director and to the Board, within ten days after the notice under subsection (1) is served, a written request for a hearing.

Request for  
hearing

(3) Where an applicant or licensee does not require a hearing under subsection (2), the Director may carry out the proposal.

Powers of  
Director  
where no  
hearing  
required

(4) Where an applicant or licensee requires a hearing under subsection (2), the Board shall appoint a time for and hold a hearing and may, on hearing the matter,

Powers of  
Board where  
hearing  
required

(a) order the Director to carry out the proposal; or

(b) order the Director to take such other action as the Board considers appropriate, in accordance with this Part and the regulations,

and the Board may substitute its opinion for that of the Director.

**181.**—(1) A licensee who is dissatisfied with the terms and conditions prescribed by a Director under subsection 176 (3), (5) or (6) is entitled to a hearing by the Board if he or she mails or delivers to the Director and to the Board, within fifteen days after receiving the licence, a written request for a hearing.

Review of  
terms of  
licence by  
Board



Powers of  
Board

(2) Where a licensee requires a hearing under subsection (1), the Board shall appoint a time for and hold a hearing and may, on hearing the matter,

- (a) confirm any or all of the terms and conditions;
- (b) strike out any or all of the terms and conditions; or
- (c) impose such other terms and conditions as the Board considers appropriate.

Receipt of  
licence

(3) For the purposes of subsection (1), a licensee shall be deemed to receive the licence on the tenth day after the day of its mailing, unless the licensee establishes that he or she did not receive it or did not, through absence, accident, illness or another cause beyond his or her control, acting in good faith, receive the licence until a later date.

Extension  
of time for  
requiring  
hearing

**182.**—(1) The Board may extend the time fixed for requiring a hearing under subsection 180 (2) or 181 (1), either before or after its expiration, where,

- (a) it appears to the Board that there are reasonable grounds for granting relief to the applicant or licensee; and
- (b) the Board is satisfied that the applicant or licensee has reasonable grounds to seek an extension,

and the Board may give such directions as it considers proper in connection with the extension.

Continuation  
of licence  
pending  
renewal

(2) Subject to section 183, where a licensee has applied for renewal of the licence and paid the prescribed fee within the prescribed time or, if no time is prescribed, before the licence expires, the licence shall be deemed to continue,

- (a) until the renewal is granted; or
- (b) where the licensee is served with notice that the Director proposes to refuse to grant the renewal, until the time for requiring a hearing has expired and, where a hearing is required, until the Board has made its decision.

Provisional  
suspension  
of licence

**183.**—(1) A Director may, by causing notice to be served on a licensee, provisionally and without a hearing suspend the licence where, in the Director's opinion, the manner in which the children's residence is operated, residential care is provided or children are placed for adoption, as the case may be,

is an immediate threat to the health, safety or welfare of the children.

(2) A notice served under subsection (1) shall contain a statement of the grounds for suspending the licence. Contents of notice

(3) A provisional suspension takes effect on the date that the licensee receives the notice. When suspension takes effect

(4) Where a notice is served under subsection (1), subsections 180 (2), (3) and (4) apply with necessary modifications. s. 180 (2-4) apply

**184.**—(1) The Director, the applicant or licensee who requires the hearing and any other persons that the Board specifies are parties to a proceeding under this Part. Parties

(2) A member of the Board who has taken part before a hearing in any investigation or consideration of its subject matter, including a review under section 171 of Part VIII (Confidentiality of and Access to Records) that relates to the applicant or licensee, shall not take part in the hearing. Members with prior involvement

(3) A member of the Board who takes part in a hearing shall not communicate with any person, except another member, a solicitor who is not the solicitor of any party, or an employee of the Board, about the subject matter of the hearing, unless all parties are notified and given an opportunity to participate. Discussion of subject matter of hearing

(4) The Board may seek independent legal advice about the subject matter of a hearing and, if it does so, shall disclose the nature of the advice to the parties to enable them to respond. When Board seeks independent legal advice

(5) A party to a proceeding under this Part shall be given an opportunity, before the hearing, to examine any written or documentary evidence that will be produced and any report whose contents will be given in evidence at the hearing. Examination of documentary evidence

(6) The evidence taken before the Board at a hearing shall be recorded. Recording of evidence

(7) No member of the Board shall participate in a decision of the Board under this Part unless he or she was present throughout the hearing and heard the evidence and argument of the parties and, unless the parties consent, the Board shall not make a decision under this Part unless all the members who were present at the hearing participate in the decision. Only members at hearing to participate in decision, etc.

(8) Despite section 21 of the *Statutory Powers Procedure Act*, the Board shall make a final decision and notify the Final decision of Board within ninety days  
R.S.O. 1980, c. 484

parties of it within ninety days from the day the Board receives the applicant's or licensee's request for a hearing under subsection 180 (2) or 181 (1).

#### APPEAL

Appeal

**185.**—(1) An appeal lies to the Divisional Court from the Board's decision under this Part.

Record to  
be filed in  
Supreme  
Court

(2) Where notice of an appeal is served under this section, the Board shall forthwith file with the Registrar of the Supreme Court the record of the proceeding in which the decision appealed from was made.

Minister  
entitled to be  
heard

(3) The Minister is entitled to be heard, by counsel or otherwise, on the argument of an appeal under this section.

#### DELIVERY OF LICENCE AND RECORDS

Records and  
licence to  
be handed  
over to  
Minister

**186.**—(1) A licensee whose licence is revoked or who ceases to carry on the activity for which the licence is required shall deliver up to the Minister the licence and all the records in the licensee's possession or control that relate to the children to whom services were being provided.

Removal of  
children

(2) Where a licence to operate a children's residence or to provide residential care is suspended or revoked, the parent of every child in the children's residence or other place where residential care is provided shall arrange for the child's removal from the residence or other place as soon as is practicable, having regard to the child's best interests, and the Minister may assist in finding an alternative placement for the child.

#### OCCUPATION BY MINISTER

Order for  
Minister's  
occupation

**187.**—(1) The Minister may, where a Director's proposal to revoke or not to renew a licence under subsection 180 (1) or notice of provisional suspension under subsection 181 (1) has been served on a licensee who operates a children's residence or provides residential care and the matter has not yet been finally disposed of, apply without notice to the District Court for an order,

- (a) authorizing the Minister to occupy and operate the children's residence or the premises where the residential care is provided, pending the outcome of the proceeding until alternative accommodation may be found for the children who are being cared for; and

- (b) directing the sheriff to assist the Minister as may be necessary in occupying the premises.

(2) The District Court may make an order referred to subsection (1) where it is satisfied that the health, safety or welfare of the children being cared for require it.

Where District Court may make order

(3) Where an order has been made under subsection (2), the Minister may, despite sections 25 and 41 of the *Expropriations Act*, immediately occupy and operate or arrange for the occupation and operation of the premises for a period not exceeding six months.

Interim management R.S.O. 1980, c. 148

### INJUNCTIONS

**188.**—(1) A Director may apply to the Supreme Court for an order enjoining any person from, Injunction

- (a) contravening subsection 176 (1) (licence requirement); or
- (b) carrying on an activity for which a licence is required while the licence is provisionally suspended under section 183.

(2) Any person may apply to the Supreme Court for an order varying or discharging an order made under subsection (1). Idem

### OFFENCES

**189.**—(1) Every person who, Offence

- (a) contravenes subsection 176 (1);
- (b) contravenes a term or condition of a licence relating to the maximum number of children to be cared for in a children's residence or other place where residential care is provided under the authority of a licence;
- (c) causes a child to be cared for in a children's residence operated by a person who is not licensed under this Part, or in another place where residential care is provided by a person who is required to be but is not licensed to provide residential care under this Part; or
- (d) is a child's parent or a person under a legal duty to provide for the child and permits the child to be



cared for in a children's residence or other place referred to in clause (c),

and every director, officer or employee of a corporation who authorizes, permits or concurs in such an act by the corporation is guilty of an offence and on conviction is liable to a fine of not more than \$1,000 for each day on which the offence continues or to imprisonment for a term of not more than one year, or to both.

Idem

(2) Every person who,

- (a) knowingly contravenes subsection 177 (2) or (3) (obstructing program supervisor, etc.);
- (b) knowingly furnishes false information in an application under this Part or in a statement, report or return required to be furnished under this Part or the regulations; or
- (c) fails to comply with an order or direction made by a court under this Part,

and every director, officer or employee of a corporation who authorizes, permits or concurs in such a contravention, furnishing or failure by the corporation is guilty of an offence and on conviction is liable to a fine of not more than \$2,000.

#### CHILDREN'S SERVICES REVIEW BOARD

Children's  
Services  
Review  
Board

**190.**—(1) The Children's Services Review Board is continued, composed of the prescribed number of members appointed by the Lieutenant Governor in Council, and has the powers and duties given to it by this Act and the regulations made under this Part.

Chairman  
and vice-  
chairmen

(2) The Lieutenant Governor in Council may appoint a member of the Board as chairman and may appoint one or more other members as vice-chairmen.

Term

(3) A member of the Board shall hold office for the prescribed term.

Quorum

(4) The prescribed number of members of the Board are a quorum.

Remuneration

(5) The chairman and vice-chairmen and the other members of the Board shall be paid the *per diem* allowances determined by the Lieutenant Governor in Council and are entitled to their reasonable and necessary travelling and living expen-



ses while attending meetings or otherwise engaged in the work of the Board.

## PART X

## INDIAN AND NATIVE CHILD AND FAMILY SERVICES

Interpretation **191.** In this Part, “customary care” means the care and supervision of an Indian or native child by a person who is not the child’s parent, according to the custom of the child’s band or native community.

Designation of native communities **192.** The Minister may designate a community, with the consent of its representatives, as a native community for the purposes of this Act.

Agreements with bands and native communities **193.** The Minister may make agreements with bands and native communities, and any other parties whom the bands or native communities choose to involve, for the provision of services.

Designation of child and family service authority **194.**—(1) A band or native community may designate a body as an Indian or native child and family service authority.

Agreements, etc. (2) Where a band or native community has designated an Indian or native child and family service authority, the Minister,

(a) shall, at the band’s or native community’s request, enter into negotiations for the provision of services by the child and family service authority;

(b) may enter into agreements with the child and family service authority and, if the band or native community agrees, any other person, for the provision of services; and

(c) may designate the child and family service authority, with its consent and if it is an approved agency, as a society under subsection 15 (2) of Part I (Flexible Services).

Subsidy for customary care **195.** Where a band or native community declares that an Indian or native child is being cared for under customary care, a society or agency may grant a subsidy to the person caring for the child.

Consultation with bands and native communities **196.** A society or agency that provides services or exercises powers under this Act with respect to Indian or native children shall regularly consult with their bands or native communities about the provision of the services or the exercise of

the powers and about matters affecting the children, including,

- (a) the apprehension of children and the placement of children in residential care;
- (b) the placement of homemakers and the provision of other family support services;
- (c) the preparation of plans for the care of children;
- (d) status reviews under Part III (Child Protection);
- (e) temporary care and special needs agreements under Part II (Voluntary Access to Services);
- (f) adoption placements;
- (g) the establishment of emergency houses; and
- (h) any other matter that is prescribed.

## PART XI

## REGULATIONS

Regulations:  
Part I  
(Flexible  
Services)

**197.**—(1) The Lieutenant Governor in Council may make regulations for the purposes of Part I,

1. prescribing additional powers and duties of Directors and program supervisors;
2. prescribing reports to be made and information to be furnished under subsection 5 (5), their form and the intervals at which they are to be made or furnished;
3. governing the exercise of the power of entry set out in subsection 6 (1);
4. governing the management and operation of approved agencies or any class of them;
5. governing the provision of approved services or any class of them;
6. exempting designated approved agencies or approved services or any class of them from any provision of this Act or the regulations for a specified period or periods;
7. governing the accommodation, facilities and equipment to be provided,
  - i. in buildings in which approved services are provided, and
  - ii. in the course of the provision of approved services;
8. further defining “service”, “child development service”, “child treatment service”, “child welfare service”, “community support service” and “young offenders service”;
9. defining “prevention service”;
10. governing the establishment, management, operation, location, construction, alteration and renovation of buildings, or any class of them, in which approved services are provided;

11. prescribing procedures and conditions of eligibility for the admission of children and other persons to and their discharge from places where approved services are provided;
12. prescribing the qualifications, powers and duties of persons employed in providing approved services or any class of approved services;
13. governing the residential placement of children and prescribing procedures for placements, discharge, assessments and case management;
14. requiring and prescribing medical and other related or ancillary services for the care and treatment of children and other persons in places where services or any class of them are provided;
15. governing applications by agencies for approval under subsections 8 (1) and 9 (1) and establishing criteria for approval;
16. governing applications by approved agencies for payments under this Part, prescribing the method, time, manner, terms and conditions of payments and providing for the suspension and withholding of payments and for the making of deductions from payments;
17. prescribing the manner of computing the amount of financial assistance for the purposes of sections 8 and 9, prescribing classes of payments for the purposes of those sections and determining the amounts of payments;
18. governing the transfer and assignment of the assets of approved agencies acquired with financial assistance from the Province of Ontario, or of any class of such assets, for the purposes of subsection 10 (3), and prescribing classes of such assets;
19. requiring approved agencies to provide the prescribed information to the prescribed persons, and prescribing the information and the persons;
20. prescribing the accounts and records to be kept by approved agencies, the claims, returns and reports to be made and budgets to be submitted to the Minister and the methods, time and manner in which they shall be made or submitted;



21. requiring service providers, or any class of service providers, to keep records, and prescribing the form and content of those records;
22. providing for the recovery, by an approved agency or by the Minister, from the person or persons in whose charge a child is or has been or from the estate of that person or persons of amounts paid by the agency for the child's care and maintenance, and prescribing the circumstances and the manner in which such a recovery may be made;
23. providing for the recovery of payments made to approved agencies under this Part and the regulations;
24. prescribing provisions to be included in the by-laws of approved agencies, or any class of them, for the purpose of subsection 13 (2);
25. prescribing the number of band or native community representatives on the boards of directors of agencies or any class of them, the manner of their appointment and their terms, for the purpose of subsection 13 (3);
26. prescribing forms and providing for their use;
27. prescribing fees or classes of fees that may be charged for services and the terms and conditions under which a fee may be charged;
28. prescribing the number of municipal representatives on the boards of directors of societies or any class of them, the manner of their appointment and their terms, for the purpose of section 18;
29. providing for an executive committee of the board of directors of a society, its composition, quorum, powers and duties;
30. prescribing a system for determining,
  - i. the amounts of payments under subsections 19 (2) and (3) (payments by Minister and municipalities),
  - ii. a society's estimated expenditures, and

- iii. the part of a society's estimated expenditures that is referable to a municipality;
- 31. providing for payments by the Minister to reimburse a municipality for all or any part of an increase in its financial obligations to a society under this Part and prescribing classes of such payments and the terms and conditions under which such a payment or class of payments may be made;
- 32. governing the construction, alteration, renovation, extension, furnishing and equipping of homes operated or supervised by societies, other than children's residences as defined in Part IX (Licensing), where residential care is provided to children.

(2) A regulation made under paragraph 18, 24, 25 or 28 of subsection (1) (transfer of assets, prescribed provisions in agency by-laws, band or native community representatives, municipal representatives) may be general or specific in its application. Idem

(3) A regulation made under paragraph 17, 30 or 31 of subsection (1) (financial assistance for the purposes of sections 8 and 9, amounts of payments to societies, payments by Minister to municipalities) is, if it so provides, effective with reference to a period before it is filed. Idem

(4) The Minister shall prescribe, Idem

- (a) standards of services; and
- (b) procedures and practices to be followed by societies,

for the purposes of subsection 15 (4).

**198.** The Lieutenant Governor in Council may make regulations for the purposes of Part II, Regulations:  
Part II  
(Voluntary  
Access to  
Services)

- (a) defining "counselling";
- (b) prescribing provisions to be contained in agreements made under section 29 (temporary care agreements) and sections 30 and 31 (special needs agreements);
- (c) requiring that residential placements with or by service providers be made in accordance with written

agreements, and prescribing their form and contents;

- (d) prescribing practices, procedures and further duties for advisory committees;
- (e) further defining “special need” and “developmental handicap”.

Regulations:  
Part III  
(Child  
Protection)

**199.** The Lieutenant Governor in Council may make regulations for the purposes of Part III,

- (a) governing the exercise of the powers of entry set out in subsections 40 (5) and (14);
- (b) assigning to a Director any powers, duties or obligations of the Crown with respect to Crown wards;
- (c) prescribing the care and maintenance that may be provided to a former Crown ward under subsection 67 (2), and the terms and conditions on which the care and maintenance may be provided;
- (d) prescribing the form in which reports are to be made under subsection 71 (3);
- (e) respecting the manner in which the register referred to in subsection 71 (5) is to be kept;
- (f) requiring the removal of a name from the register referred to in subsection 71 (5), or the amendment of the register, under specified circumstances, and specifying those circumstances;
- (g) prescribing practices and procedures for hearings held under clause 72 (4) (b) (amendment of register).

Regulations:  
Part IV  
(Young  
Offenders)

**200.**—(1) The Lieutenant Governor in Council may make regulations for the purposes of Part IV,

- (a) governing the establishment, operation, maintenance, management and use of places of temporary detention, open custody and secure custody and other services and programs provided under subsection 85 (1);
- (b) governing the establishment and operation of and the accommodation, equipment and services to be provided in any premises or class of premises estab-

lished, operated, maintained or designated for the purposes of the federal Act or for providing services or programs under subsection 85 (1);

- (c) prescribing additional duties and functions of,
  - (i) probation officers, and
  - (ii) provincial directors;
- (d) prescribing the duties and functions of bailiffs;
- (e) prescribing the qualifications of probation officers;
- (f) prescribing additional duties and functions of persons in charge of places of temporary detention, open custody and secure custody;
- (g) prescribing reports to be made and information to be furnished under section 88, their form and the intervals at which they are to be made or furnished;
- (h) governing the conduct, discipline, rights and privileges of young persons in places of temporary detention, open custody or secure custody or any class of them or in a service or program provided under subsection 85 (1);
- (i) prescribing procedures for the admission of young persons to and their discharge from places of temporary detention, open custody or secure custody or any class of them or premises in which a service or program is provided under subsection 85 (1);
- (j) prescribing classes of payment by way of provincial aid for the establishment, operation or maintenance of places of temporary detention, open custody or secure custody, the methods of determining the payments, the manner and time of making them, the terms and conditions of such payments and the circumstances under which such payments may be suspended or withheld or deductions may be made from them;
- (k) prescribing the number of members of the Board, their terms of office and the number of members that is a quorum;
- (l) prescribing additional powers, duties and procedures of the Board;

- (m) governing the exercise of the power of entry given by a warrant issued under subsection 94 (4);
- (n) respecting any matter considered necessary or advisable to carry out effectively the intent and purpose of Part IV.

Idem

(2) A regulation made under clause (1) (j) (classes of payment by way of provincial aid) is, if it so provides, effective with reference to a period before it is filed.

Regulations:  
Part V  
(Rights of  
Children)

**201.** The Lieutenant Governor in Council may make regulations for the purposes of Part V,

- (a) governing internal complaints procedures to be established under section 105;
- (b) establishing procedures for reviews under section 106;
- (c) prescribing additional functions of the Office of Child and Family Service Advocacy.

Regulations:  
Part VI  
(Extra-  
ordinary  
Measures)

**202.** The Lieutenant Governor in Council may make regulations for the purposes of Part VI,

- (a) prescribing procedures for the admission of children to and their discharge from secure treatment programs;
- (b) prescribing standards for secure treatment programs;
- (c) prescribing standards for secure isolation rooms;
- (d) prescribing procedures to be followed when a child is placed in or released from a secure isolation room;
- (e) prescribing the frequency of reviews under subsection 121 (6);
- (f) prescribing matters to be reviewed and prescribing additional reports under section 122;
- (g) prescribing procedures as intrusive procedures;
- (h) prescribing the intervals at which reports are to be made by review teams under subsection 123 (5);



- (i) prescribing drugs or combinations of drugs as psychotropic drugs;
- (j) prescribing forms and requiring their use.

**203.** The Lieutenant Governor in Council may make regulations for the purposes of Part VII,

Regulations:  
Part VII  
(Adoption)

- (a) prescribing the form of an affidavit of execution for the purposes of subsection 131 (12);
- (b) prescribing the manner in which placements are to be registered under subsection 135 (6);
- (c) prescribing special circumstances for the purposes of subsection 136 (4) (placement outside Canada);
- (d) prescribing forms and providing for their use;
- (e) prescribing classes of information for the purposes of clause 157 (2) (d) (disclosure by Director);
- (f) prescribing expenses that may be charged under clause 159 (d), classes of such expenses and the terms and conditions under which such expenses or classes of expenses may be charged.

**204.** The Lieutenant Governor in Council may make regulations for the purposes of Part VIII,

Regulations:  
Part VIII  
(Confidentiality of  
and Access  
to Records)

- (a) prescribing the manner in which a Director's approval is to be obtained under subsection 166 (2) (disclosure for research);
- (b) prescribing review procedures for the Board under subsection 171 (3);
- (c) prescribing provisions for the purposes of subsection 174 (2) (service providers' codes of procedure);
- (d) prescribing retention, storage and destruction schedules for the purposes of subsection 174 (3).

**205.** The Lieutenant Governor in Council may make regulations for the purposes of Part IX,

Regulations:  
Part IX  
(Licensing)

- (a) governing the establishment, management, operation and use of children's residences, and other

premises where residential care is provided under the authority of a licence;

- (b) defining “common parentage” for the purposes of clause 175 (a) and clause 176 (1) (b);
- (c) governing the issuing, renewal and expiry of licences and prescribing fees payable by an applicant for a licence or its renewal;
- (d) governing the exercise of the power of entry set out in subsection 177 (1);
- (e) governing the establishment of and the accommodation, facilities, equipment and services to be provided in,

- (i) children’s residences, and

- (ii) other premises where residential care is provided under the authority of a licence,

or any class of them;

- (f) exempting designated,

- (i) children’s residences,

- (ii) other premises where residential care is provided under the authority of a licence, or

- (iii) persons placing children for adoption,

or any class of them, from any provision of this Part or the regulations for a prescribed period, and prescribing the period;

- (g) prescribing the accounts and records to be kept by licensees;
- (h) prescribing the qualifications, powers and duties of persons supervising children in,

- (i) children’s residences, or

- (ii) other premises where residential care is provided under the authority of a licence,

or any class of them;

- (i) governing procedures for the admission to and discharge of children from,

- (i) children's residences, or

- (ii) other premises where residential care is provided under the authority of a licence,

or any class of them;

- (j) requiring the operators of children's residences or persons who provide residential care or place children for adoption under the authority of a licence to provide the prescribed information and to make the prescribed returns and reports, and prescribing the information, returns and reports;
- (k) prescribing the number of members of the Board, their terms of office and the number of members that is a quorum;
- (l) prescribing additional powers, duties and procedures of the Board;
- (m) governing the placement of children for adoption;
- (n) prescribing rules and standards governing the placement of children by licensees for adoption;
- (o) providing for the inspection of the records of persons licensed to place children for adoption;
- (p) governing the qualifications of persons or classes of persons employed by persons licensed to place children for adoption;
- (q) requiring persons licensed to place children for adoption to be bonded or to submit letters of credit in the prescribed form and terms and with the prescribed collateral security, prescribing the form, terms and collateral security and providing for the forfeiture of bonds and letters of credit and the disposition of the proceeds;
- (r) prescribing forms and providing for their use.

**206.** The Lieutenant Governor in Council may make regulations for the purposes of Part X,

Regulations:  
Part X  
(Indian and  
Native Child  
and Family  
Services)

- (a) exempting an Indian or native child and family service authority, a band or native community or specified persons or classes of persons, including persons caring for children under customary care, from any provision of this Act or the regulations;
- (b) prescribing matters requiring consultation between societies or agencies and bands or native communities for the purposes of clause 196 (h).

## PART XII

## TRANSITION AND REPEALS

**207.** Subclause 1 (c) (i) of the *Charitable Institutions Act*, being chapter 64 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

- (i) a children's residence under Part IX (Licensing) of the *Child and Family Services Act*, 1984 or premises approved under subsection 9 (1) of Part I (Flexible Services) of that Act. 1984, c. 55

**208.**—(1) The *Child Welfare Act*, being chapter 66 of the Revised Statutes of Ontario, 1980, paragraph 2 of the Schedule to the *Revised Statutes Amendment Act, 1981*, being chapter 66 and section 17 of the *Municipal Conflict of Interest Act, 1983*, being chapter 8, are repealed.

(2) Despite subsection (1),

Transition

- (a) a children's aid society that is in operation in a territorial jurisdiction on the day this section comes into force shall be deemed to be an approved agency and to have been designated as a society under subsection 15 (2) of Part I (Flexible Services) for that territorial jurisdiction for all the functions set out in subsection 15 (3) of that Part;
- (b) a person whose appointment as a Director under the *Child Welfare Act* is in effect on the day this section comes into force shall be deemed to have been appointed as a Director under subsection 5 (1) of Part I (Flexible Services) to perform all the duties and functions and exercise all the powers of a Director under this Act and the regulations;
- (c) a licence issued or renewed under the said Act that is in effect on the day this section comes into force continues in effect under Part IX (Licensing) until the term for which it was issued expires or until it is otherwise terminated under that Part;
- (d) the said Act continues to apply to a proceeding commenced under Part II (Protection and Care of Children) of the said Act before the day this section comes into force; and
- (e) the said Act continues to apply to an application for an adoption order in respect of a child who is placed



for adoption before the day this section comes into force.

Exception

(3) Clause (2) (a) does not apply to The Jewish Family and Child Service of Metropolitan Toronto.

**209.**—(1) The *Children's Institutions Act*, being chapter 67 of the Revised Statutes of Ontario, 1980, is repealed.

Transition

(2) Despite subsection (1),

- (a) an approval under the said Act that is in effect on the day this section comes into force continues in effect under Part I (Flexible Services) until it is terminated under that Part or until a new approval is given under that Part;
- (b) a person whose appointment as a Director under the said Act is in effect on the day this section comes into force shall be deemed to have been appointed as a Director under subsection 5 (1) of Part I (Flexible Services) to perform all the duties and functions and exercise all the powers of a Director under this Act and the regulations; and
- (c) a person whose appointment as a program adviser under the said Act is in effect on the day this section comes into force shall be deemed to have been appointed as a program supervisor under subsection 5 (2) of Part I (Flexible Services) to perform all the duties and functions and exercise all the powers of a program supervisor under this Act and the regulations.

**210.**—(1) The *Children's Residential Services Act*, being chapter 71 of the Revised Statutes of Ontario, 1980, is repealed.

Transition

(2) Despite subsection (1),

- (a) a licence issued or renewed under the said Act that is in effect on the day this section comes into force continues in effect under Part IX (Licensing) until the term for which it was issued expires or until it is otherwise terminated under that Part ; and
- (b) a person whose appointment as a Director under the said Act is in effect on the day this section comes into force shall be deemed to have been appointed as a Director under subsection 5 (1) of Part I (Flexible

Services) to perform all the duties and functions and exercise all the powers of a Director under this Act and the regulations; and

- (c) a person whose appointment as a program adviser under the said Act is in effect on the day this section comes into force shall be deemed to have been appointed as a program supervisor under subsection 5 (2) of Part I (Flexible Services) to perform all the duties and functions and exercise all the powers of a program supervisor under this Act and the regulations.

**211.**—(1) The *Children's Mental Health Services Act*, being chapter 69 of the Revised Statutes of Ontario, 1980, is repealed.

(2) Despite subsection (1),

Transition

- (a) an approval under the said Act that is in effect on the day this section comes into force continues in effect under Part I (Flexible Services) until it is terminated under that Part or until a new approval is given under that Part;
- (b) a person whose appointment as a Director under the said Act is in effect on the day this section comes into force shall be deemed to have been appointed as a Director under subsection 5 (1) of Part I (Flexible Services) to perform all the duties and functions and exercise all the powers of a Director under this Act and the regulations; and
- (c) a person whose appointment as a program adviser under the said Act is in effect on the day this section comes into force shall be deemed to have been appointed as a program supervisor under subsection 5 (2) of Part I (Flexible Services) to perform all the duties and functions and exercise all the powers of a program supervisor under this Act and the regulations.

**212.**—(1) Clauses 10 (2) (b), (c) and (i) of the *Coroners Act*, being chapter 93 of the Revised Statutes of Ontario, 1980, are repealed and the following substituted therefor:

- (b) a children's residence under Part IX (Licensing) of the *Child and Family Services Act, 1984* or premises approved under subsection 9 (1) of Part I (Flexible Services) of that Act.

1984, c. 55

(2) Subsections 10 (3) and (4) of the said Act are repealed and the following substituted therefor:

Inmate off  
premises

(3) Where a person dies while he is,

(a) a patient of a psychiatric facility;

(b) committed to a correctional institution;

R.S.O. 1980,  
c. 508

(c) a ward of the Crown under the *Training Schools Act*; or

S.C. 1980-  
81-82-83,  
c. 110

(d) committed to secure custody or open custody under the *Young Offenders Act* (Canada),

but while not on the premises or in actual custody of the facility, institution, training school or place of custody, as the case may be, subsections (1) and (2) apply as if the person were a resident of an institution named therein.

Persons in  
custody

(4) Where a person dies while detained by or in the actual custody of a peace officer or while an inmate on the premises of a correctional institution, lock-up, training school or place or facility designated as a place of secure custody under section 24 of the *Young Offenders Act* (Canada), the peace officer or officer in charge of the institution, lock-up, training school or place or facility, as the case may be, shall immediately give notice of the death to a coroner and the coroner shall issue his warrant to hold an inquest upon the body.

S.C. 1980-  
81-82-83,  
c. 110

**213.**—(1) Clause 47 (1) (a) of the *Courts of Justice Act, 1984*, being chapter 11, is repealed and the following substituted therefor:

(a) shall be deemed to be and shall sit as the Provincial Offences Court,

(i) for the purpose of dealing with young persons as defined in the *Provincial Offences Act*, and

(ii) for the purposes of prosecutions under Part III (Child Protection) and Part VII (Adoption) of the *Child and Family Services Act, 1984*; and

R.S.O. 1980,  
c. 400

1984, c. 55

(2) The Schedule to Part III of the said Act is repealed and the following substituted therefor:

## SCHEDULE

## Jurisdiction under the following statutory provisions:

Statutes	Provisions
1. Annulment of Marriages Act (Ontario) (Canada)	All
2. Child and Family Services Act, 1984	Parts III, VI and VII
3. Children's Law Reform Act	All, except sections 60 and 61
4. Divorce Act (Canada)	All
5. Education Act	Sections 29 and 30
6. Family Law Reform Act	All, except Part V
7. Marriage Act	Sections 6 and 9
8. Minors' Protection Act	Section 2
9. Reciprocal Enforcement of Maintenance Orders Act, 1982	All
10. Young Offenders Act (Canada)	All

**(3) Section 70 of the said Act is amended by adding thereto the following subsection:**

(1a) A proceeding in the Provincial Offences Court under Part III (Child Protection) or Part VII (Adoption) of the *Child and Family Services Act, 1984* shall be conducted in the Provincial Court (Family Division) or, in the Judicial District of Hamilton-Wentworth, in the Unified Family Court, sitting as the Provincial Offences Court. Sittings  
1984, c. 55

**(4) Clause 75 (1) (a) of the said Act is repealed and the following substituted therefor:**

(a) shall be deemed to be and shall sit as the Provincial Offences Court,

(i) for the purpose of dealing with young persons as defined in the *Provincial Offences Act*, and R.S.O. 1980,  
c. 400

(ii) for the purposes of prosecutions under Part III (Child Protection) and Part VII (Adoption) of the *Child and Family Services Act, 1984*. 1984, c. 55

**214.—(1) Subclauses 19 (5) (a) (i) and (vi) of the *Crown Employees Collective Bargaining Act*, being chapter 108 of the Revised Statutes of Ontario, 1980, are repealed and the following substituted therefor:**



1984, c. 55

- (i) premises where services are provided by the Minister under the *Child and Family Services Act, 1984*,

S.C. 1980-  
81-82-83,  
c. 110

- (vi) a place or facility designated under subsection 7 (1) of the *Young Offenders Act* (Canada) as a place of temporary detention.

(2) Clause 19 (5) (a) of the said Act is amended by adding thereto the following subclause:

- (viii) a place or facility designated as a place of secure custody or as a place of open custody under section 24 of the *Young Offenders Act* (Canada).

**215.**—(1) Clause 1 (c) of the *Day Nurseries Act*, being chapter 111 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

1984, c. 55

- (c) “Board” means the Children’s Services Review Board continued under Part IX (Licensing) of the *Child and Family Services Act, 1984*.

(2) Subclause 1 (d) (v) of the said Act is repealed.

(3) Subsection 13 (5) of the said Act is repealed and the following substituted therefor:

Application  
of 1984,  
c. 55

(5) Sections 182, 184 and 185 of Part IX of the *Child and Family Services Act, 1984* apply with necessary modifications to proceedings before the Board, to the powers of the Board under this Act and to appeals therefrom.

**216.**—(1) Clause 43 (c) of the *Education Act*, being chapter 129 of the Revised Statutes of Ontario, 1980, is amended by striking out “the *Children’s Residential Services Act*” in the second and third lines and inserting in lieu thereof “Part IX (Licensing) of the *Child and Family Services Act, 1984*”.

(2) Subsection 166 (2) of the said Act is amended by striking out “a children’s mental health centre approved under the *Children’s Mental Health Services Act*” in the ninth and tenth lines and inserting in lieu thereof “premises approved under subsection 9 (1) of Part I (Flexible Services) of the *Child and Family Services Act, 1984* for the provision of a child development service or child treatment service”.



**217.** Subsection 52 (1) of the *Health Insurance Act*, being chapter 197 of the Revised Statutes of Ontario, 1980, is amended by striking out “a children’s mental health centre or an approved children’s mental health centre under the *Children’s Mental Health Services Act*” in the third, fourth and fifth lines.

**218.—**(1) Subclauses 1 (d) (iii) and (iv) of the *Homes for Retarded Persons Act*, being chapter 201 of the Revised Statutes of Ontario, 1980, are repealed and the following substituted therefor:

- (iii) premises approved under subsection 9 (1) of Part I (Flexible Services) of the *Child and Family Services Act, 1984*, a children’s residence licensed under Part IX (Licensing) of that Act or a foster home within the meaning of that Act. 1984, c. 55

(2) Subclauses 1 (d) (i) and (viii) of the said Act are repealed.

(3) Section 8 of the said Act is amended by striking out “the *Child Welfare Act*” in the thirteenth and fourteenth lines and inserting in lieu thereof “Part III (Child Protection) of the *Child and Family Services Act, 1984*”.

**219.—**(1) The Preamble to *The Jewish Family and Child Service of Metropolitan Toronto Act, 1980*, being chapter 105, is amended by striking out “*The Child Welfare Act, 1978*” in the seventeenth line and inserting in lieu thereof “the *Child and Family Services Act, 1984*”.

(2) Sections 1 and 2 of the said Act are repealed and the following substituted therefor:

**1.** For the purposes of every Act, the Corporation is deemed to be a children’s aid society designated under subsection 15 (2) of the *Child and Family Services Act, 1984*, for the territorial jurisdiction in which it operates on the day section 219 of that Act comes into force, for all the functions set out in subsection 15 (3) of that Act. Corporation deemed to be a children’s aid society 1984, c. 55

**2.** Despite section 1,

- (a) sections 18 and 19 (municipal representatives, payments by Minister and municipalities), subsection 20 (1) (municipal levies) and clause 22 (1) (f) (revoca-

Non-application of certain provisions

1984, c. 55

tion and take-over powers) of the *Child and Family Services Act, 1984* do not apply to the Corporation; and

- (b) the powers conferred on the Corporation to apprehend and detain children under section 40 of that Act shall be exercised only within The Municipality of Metropolitan Toronto.

**220.** Clause 6a (b) of the *Ministry of Community and Social Services Act*, being chapter 273 of the Revised Statutes of Ontario, 1980, as enacted by the Statutes of Ontario, 1981, chapter 39, section 2, is repealed and the following substituted therefor:

1984, c. 55

R.S.O. 1980,  
c. 508S.C. 1980-  
81-82-83,  
c. 110

- (b) any other person who is a Crown ward under Part III (Child Protection) of the *Child and Family Services Act, 1984* or the *Training Schools Act* or held in a place or facility designated as a place of secure custody or as a place of open custody under section 24 of the *Young Offenders Act* (Canada) or as a place of temporary detention under subsection 7 (1) of that Act.

**221.** Clause 1 (c) of the *Ministry of Correctional Services Act*, being chapter 275 of the Revised Statutes of Ontario, 1980, is amended by inserting after “Act” in the fourth line “a place or facility designated as a place of secure custody or as a place of open custody under section 24 of the *Young Offenders Act* (Canada) or as a place of temporary detention under subsection 7 (1) of that Act”.

**222.** Subsection 160 (3) of the *Municipal Act*, being chapter 302 of the Revised Statutes of Ontario, 1980, is amended by inserting after “training school” in the fourth line “or place of secure custody designated under section 24 of the *Young Offenders Act* (Canada)”.

**223.** Subclauses 1 (g) (ii) and (iii) of the *Nursing Homes Act*, being chapter 320 of the Revised Statutes of Ontario, 1980, are repealed and the following substituted therefor:

1984, c. 55

- (ii) the *Child and Family Services Act, 1984*.

**224.** Clause 23 (1) (c) of the *Occupational Health and Safety Act*, being chapter 321 of the Revised Statutes of Ontario, 1980, is amended by striking out “detention and observation home” in the third line and inserting in lieu thereof “place of secure custody designated under section 24 of the *Young*

*Offenders Act (Canada)* or place of temporary detention designated under subsection 7 (1) of that Act”.

**225.** Subsection 17 (2) of the *Ombudsman Act*, being chapter 325 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

(2) Notwithstanding any provision in any Act, where any letter written by, To be forwarded

- (a) an inmate of any provincial correctional institution;
- (b) a ward of the Crown under the *Training Schools Act*; R.S.O. 1980, c. 508
- (c) a person held in a place of secure or open custody designated under section 24 of the *Young Offenders Act (Canada)*; or S.C. 1980-81-82-83, c. 110
- (d) a patient in a provincial psychiatric facility,

is addressed to the Ombudsman it shall be immediately forwarded, unopened, to the Ombudsman by the person for the time being in charge of the institution, training school, place of secure or open custody or facility.

**226.** Subclause 1 (h) (iv) of the *Private Hospitals Act*, being chapter 389 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

- (iv) a children's residence licensed under Part IX (Licensing) of the *Child and Family Services Act, 1984*. 1984, c. 55

**227.—(1)** Subclauses 21 (1) (a) (ii), (iii) and (iv) of the *Health Protection and Promotion Act, 1983*, being chapter 10, are repealed and the following substituted therefor:

- (ii) premises approved under subsection 9 (1) of Part I (Flexible Services) of the *Child and Family Services Act, 1984*, 1984, c. 55
- (iii) children's residence within the meaning of Part IX (Licensing) of the *Child and Family Services Act, 1984*.

(2) Clause 21 (1) (a) of the said Act is amended by adding thereto the following subclause:

(xviii) place or facility designated as a place of secure custody under section 24 of the *Young Offenders Act* (Canada).

S.C. 1980-81-82-83, c. 110

**(3) Subsections 37 (1) and (2) of the said Act are repealed and the following substituted therefor:**

Examination of person under detention

(1) A physician who provides medical services in a correctional institution, a training school, a place of secure custody, a lock-up or a place of temporary detention and who is of the opinion that a person detained therein is infected or may be infected with an agent of a communicable disease shall notify forthwith the medical officer of health of the health unit in which the institution is located.

Order by M.O.H. re person under detention

(2) A medical officer of health by order may require the superintendent of a correctional institution, a training school, a place of secure custody, a lock-up or a place of temporary detention located in the health unit served by the medical officer of health to take such action as is specified in the order to prevent the infection of others by a person who is detained in the correctional institution, training school, place of secure custody, lock-up or place of temporary detention and who has been examined and found to be infected with an agent of a communicable disease.

**(4) Clause 37 (3) (c) of the said Act is repealed and the following substituted therefor:**

(c) “place of secure custody” means a place or facility designated as a place of secure custody under section 24 of the *Young Offenders Act* (Canada);

(ca) “place of temporary detention” means a place or facility designated as a place of temporary detention under subsection 7 (1) of the *Young Offenders Act* (Canada).

S.C. 1980-81-82-83, c. 110

**228.—(1) Sections 1 to 8 and subsections 9 (1), (2) and (3) of the *Young Offenders Implementation Act*, 1984, being chapter 19, are repealed.**

Transition

**(2) Despite subsection (1),**

(a) services and programs established under subsection 3 (1) of the said Act on or before the day this section comes into force are continued under subsection 85 (1) of Part IV (*Young Offenders*);



- (b) a person whose appointment as a provincial director under the said Act is in effect on the day this section comes into force shall be deemed to have been appointed as a provincial director under clause 86 (1) (a) of Part IV (Young Offenders) to perform all the duties and functions of a provincial director,
- (i) under the federal Act, and
  - (ii) under the regulations;
- (c) a person whose appointment as a probation officer under the said Act is in effect on the day this section comes into force shall be deemed to have been appointed as a probation officer under clause 86 (1) (b) of Part I (Flexible Services) to perform all the duties and functions,
- (i) of a youth worker under the federal Act, and
  - (ii) of a probation officer for the purpose of dealing with young persons under the *Provincial Offences Act*, and
  - (iii) of a probation officer under the regulations; and
- (d) a person whose appointment as a program supervisor under the said Act is in effect on the day this section comes into force shall be deemed to have been appointed as a program supervisor under subsection 5 (2) of Part I (Flexible Services) to perform all the duties and functions and exercise all the powers of a program supervisor under this Act and the regulations.

R.S.O. 1980,  
c. 400

**229.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor. Commence-  
ment

**230.** The short title of this Act is the *Child and Family Services Act, 1984*. Short title





# Bill 78

## An Act to Extend Security of Tenure for Tenants

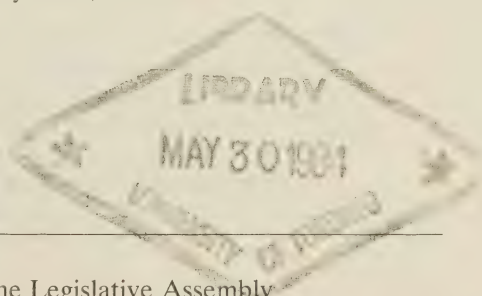
Mr. McClellan

*1st Reading* May 22nd, 1984

*2nd Reading*

*3rd Reading*

*Royal Assent*



## EXPLANATORY NOTE

The purpose of this Bill is to extend security of tenure for tenants of residential dwellings by protecting them against economic eviction. It does this through amendments to the *Landlord and Tenant Act*, the *Residential Tenancies Act* and the *Planning Act*, 1983. The principle of security of tenure for residential tenants is broadened by the following new provisions:

1. Tenants shall receive financial compensation when a tenancy agreement is terminated under the no fault sections of the *Landlord and Tenant Act*.
2. Tenants shall have the right, on a first refusal basis, to purchase their residential premises when the landlord proposes to sell, demolish or change the use of the premises. This right shall be assigned to a non-profit corporation composed of the tenants as shareholders, to a municipal or private non-profit housing corporation or to a non-profit housing co-operative.
3. The exemptions in section 134 of the *Residential Tenancies Act* are deleted, except for tenants in geared to income rental units and tenants of non-profit housing co-operatives. Rent review protection is thereby extended to tenants of municipal and private non-profit housing, mobile homes, student housing and religious institutions. The January 1, 1976 exemption and the \$750 per month rental exemption are abolished.
4. Landlords will not be allowed to pass through costs of renovations or repairs to their tenants unless the tenants are consulted and approve the expenditure in advance or the repairs are reasonably necessary.
5. Cabinet shall have the power to set an absolute upper limit on allowable rent increases.
6. All municipalities shall have the power to control both demolitions of rental units and conversions of rental units to luxury accommodation.

Bill 78

1984

## An Act to Extend Security of Tenure for Tenants

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** The *Landlord and Tenant Act*, being chapter 232 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following Part:

### PART VI

#### SECURITY OF TENURE

**132.**—(1) Where a landlord proposes to terminate a tenancy pursuant to section 105 or section 107, the landlord shall, prior to terminating the tenancy, pay to the tenant, Payments to tenant in no fault termination

- (a) the reasonable actual relocation costs of the tenant or the equivalent of one month's rent, whichever is greater;
- (b) the undepreciated cost of any reasonable improvements made by the tenant to the premises; and
- (c) where the tenant has been resident in the premises for a period of three years or more, one month's rent for the first three years of the residency plus one month's rent for each additional four years of residency.

(2) Where an application is made pursuant to section 113 for a writ of possession by reason of a notice of termination issued pursuant to section 105 or section 107, and the judge determining the matter issues an order terminating the tenancy and a writ of possession, he shall stay the execution of the writ unless he is satisfied that the payments required pursuant to subsection (1) have been made. Execution of writ to be stayed until payments made

Where  
landlord  
and tenant  
cannot  
agree as to  
amounts

(3) Where the landlord and tenant are unable to agree as to the amount to be paid to the tenant pursuant to subsection (1),

- (a) an application may be made at any time after the notice of termination under section 113 has been served on the tenant; or
- (b) where the landlord has applied for a writ of possession, the judge hearing the application may determine the amount to be paid.

Right of  
first  
refusal

**133.**—(1) No residential unit or residential complex shall be sold, demolished or its use otherwise changed without the owner of the unit or complex first offering to the tenant or tenants the opportunity of purchasing the unit or complex.

Notice of  
sale, etc.

(2) Where a landlord proposes to sell, demolish or otherwise change the use of a residential unit or a residential complex he shall, prior to taking any action to effect such sale, demolition or other change of use, give a notice to the tenants affected advising them of the proposed sale, demolition or other change of use.

Sixty day  
period

(3) Where a notice is received by a tenant or tenants pursuant to subsection (2), the landlord may proceed with the proposed sale, demolition or change to other use if within sixty days he has not received from the tenant or tenants an offer to purchase the unit or complex.

Offer to  
purchase  
requires  
tenants'  
authorization

(4) Where the proposed sale, demolition or change to other use is in respect of a residential complex, no offer to purchase given to the landlord shall be effective unless it is authorized by tenants of residential units in the complex.

Assignment  
of right  
to purchase

(5) The tenants of a residential complex shall assign their right to purchase the residential complex to,

- (a) a non-profit corporation, the shareholders of which are the tenants of the residential complex and of which no shareholders are not tenants of the complex;
- (b) a non-profit housing corporation, including a municipal non-profit housing corporation; or
- (c) a non-profit co-operative housing project.

Referral to  
O.M.B. to  
determine  
price

(6) Where a landlord has received an offer to purchase pursuant to subsection (1) and where the landlord and the tenant



or tenants or the representative of the tenants, as the case may be, cannot agree on a price to be paid for the unit or complex, either party may refer the determination of the value of the property to the Ontario Municipal Board.

(7) The value determined by the Ontario Municipal Board shall be final and the offer to purchase shall be deemed to have been made with that value as the purchase price, except that within seven days of the determination by the Ontario Municipal Board, the purchaser shall have the right, without penalty, of withdrawing the offer. Idem

**2.—(1) Clause 131 (1) (a) of the *Residential Tenancies Act*, being chapter 452 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:**

- (a) subject to subsection (6), the findings of the Commission concerning operating costs, financing costs and capital expenditures that the landlord has experienced or will experience in respect of the residential complex.

**(2) Clause 131 (5) (a) of the said Act is repealed and the following substituted therefor:**

- (a) the Commission shall, subject to subsection (7), make an order setting the maximum rent that may be charged for each rental unit that is under review and the date the rents may take effect; and

. . . . .

**(3) Section 131 of the said Act is amended by adding thereto the following subsections:**

(6) In reaching its findings concerning capital expenditures, the Commission shall consider the costs of major renovations or improvements only when the landlord has satisfied the Commission that the major renovations or improvements,

When cost of renovations, etc., may be considered

- (a) have been approved, in advance of the expense having been incurred, by a majority of the tenants of the residential complex; or
- (b) are reasonably necessary in order to maintain the existing level of service or standard of maintenance in the complex or have been ordered by a municipal authority.

Maximum  
rent  
increase

(7) The Lieutenant Governor in Council shall establish from time to time a maximum amount of rent increase that may be allowed by the Commission.

**(4) Clauses 134 (1) (a), (c), (d), (e), (f) and (g) of the said Act are repealed and the following substituted therefor:**

- (a) a rental unit owned, operated or administered by or on behalf of the Government of Canada or Ontario or a municipality, including a regional, district or metropolitan municipality, or any agency thereof, where the rent for that unit is determined in accordance with the tenant's income;

R.S.C. 1970,  
c. N-10

- (c) a rental unit situate in a non-profit co-operative housing project as defined in the *National Housing Act* (Canada).

**3.—(1) Subsection 31 (1) of the *Planning Act*, 1983, being chapter 1, is amended by adding thereto the following clause:**

- (ea) "rental residential property" means a building that contains one or more dwelling units which are rented to tenants as domestic establishments.

**(2) Section 31 of the said Act is amended by adding thereto the following subsections:**

Policy  
statement  
re rental  
housing

(1a) Where there is no official plan in effect in a local municipality, the council of the municipality may, by by-law approved by the Minister, adopt a policy statement containing provisions relating to property conditions and establishing guidelines setting out the supply and availability of rental housing in various price categories.

Authority to  
pass by-law  
re refusal  
of permits

(1b) If,

- (a) an official plan that includes provisions establishing a policy regarding the supply and availability of rental housing in various price categories is in effect in a local municipality; or
- (b) the council of a local municipality has adopted a policy statement as mentioned in subsection (1a),

the council of the municipality may pass a by-law authorizing it to refuse to issue a building permit or demolition permit applied for by an owner of rental residential property,

(c) where it is satisfied that the issuance of the permit would result in the reduction in the number of rental residential units in the municipality or would result in the reduction in the number of rental residential units in specified price categories in the municipality; or

(d) where the landlord has failed to abide by section 133 of the *Landlord and Tenant Act*.

R.S.O. 1980,  
c. 232

**4.** The *Fraudulent Conveyances Act* shall apply to any landlord who fails to abide by the terms of section 133 of the *Landlord and Tenant Act*.

R.S.O. 1980,  
cc. 176, 232

**5.** This Act comes into force on the day it receives Royal Assent.

Commence-  
ment

**6.** The short title of this Act is the *Tenants Security Act*, 1984.

Short title



# Bill 79

## An Act to amend the Nursing Homes Act

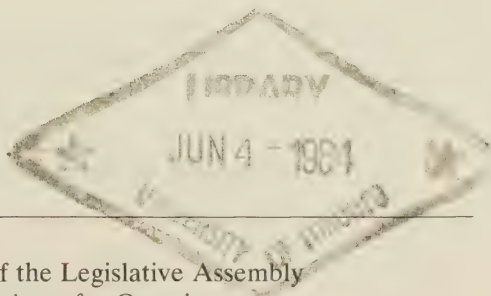
Mr. Cooke

*1st Reading* May 22nd, 1984

*2nd Reading*

*3rd Reading*

*Royal Assent*





## EXPLANATORY NOTE

The Bill would restrict new nursing home licences to charitable non-profit corporations. After the end of 1990, licences held by licensees who are not charitable non-profit corporations would not be renewed.

**Bill 79**

**1984**

## **An Act to amend the Nursing Homes Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.—(1) Subsection 4 (1) of the *Nursing Homes Act*, being chapter 320 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:**

(1) A corporation without share capital having objects of a charitable nature incorporated under Part III of the *Corporations Act* may apply in accordance with this Act and the regulations for a licence to establish, operate or maintain a nursing home.

Who may  
seek licence  
R.S.O. 1980,  
c. 95

(1a) Subject to subsection (2), an applicant who meets the requirements of this Act and the regulations and pays the prescribed fee is entitled to be issued a licence.

Issuing  
of licence

**(2) Clause 4 (5) (b) of the said Act is repealed and the following substituted therefor:**

- (b) the past conduct of any officer or director of the applicant affords reasonable grounds for belief that the home will not be operated in accordance with the law and with honesty and integrity; or

. . . . .

**(3) Subsection 4 (7) of the said Act is repealed and the following substituted therefor:**

(7) A licence shall not be transferred except, with the Director's written approval, to a corporation without share capital having objects of a charitable nature incorporated under Part III of the *Corporations Act*.

Where  
licence  
may be  
transferred  
R.S.O. 1980,  
c. 95

**2. Section 5 of the said Act is amended by adding thereto the following subsection:**

Where  
renewal to  
be refused

(2) The Director shall refuse to renew a nursing home licence where the applicant for renewal would not be entitled to make an original application under subsection 4 (1).

Transition

**3.** The Director may issue a nursing home licence to an applicant who is not a corporation without share capital having objects of a charitable nature incorporated under Part III of the *Corporations Act* where the application was made before the day on which section 1 of this Act comes into force.

Commence-  
ment

**4.—(1)** This Act, except section 2, comes into force on the day it receives Royal Assent.

Idem

(2) Section 2 comes into force on the 1st day of January, 1991.

Short title

**5.** The short title of this Act is the *Nursing Homes Amendment Act, 1984*.

# Bill 80

## **An Act to provide for a Right of Access to Government Information in Ontario and to provide Protections respecting the Collection and Use of Personal Information**

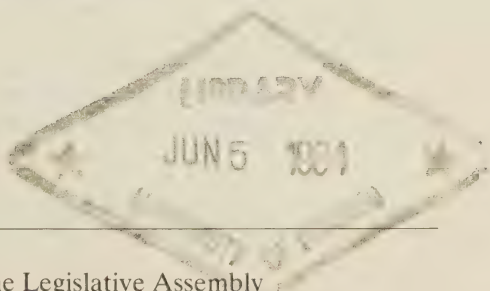
The Hon. N. W. Sterling  
*Provincial Secretary for Resources Development*

*1st Reading*      May 24th, 1984

*2nd Reading*

*3rd Reading*

*Royal Assent*



## EXPLANATORY NOTES

The Bill substantially implements the recommendations of the Report of the Commission on Freedom of Information and Individual Privacy (Williams Report).

**PART I** makes the Management Board of Cabinet responsible for the administration of the Act and establishes an office of a Privacy and Information Commissioner in a manner that is parallel to the Office of Ombudsman.

**PART II** provides for a general right to access to government information subject to specified exceptions and procedures. Provision is also made for publication of relevant information regarding the nature, organization and contents of government records.

**PART III** regulates the collection, use and disclosure of personal information. The general right of access to information in Part II is reversed in respect of personal information and access is prohibited except to the person concerned, subject to specific exceptions and procedures.

**PART IV** provides the procedure for investigation and review of decisions to give or refuse information. For this purpose, the Privacy and Information Commissioner has investigative powers similar to those of the Ombudsman and reports to the Assembly.

**PART V** contains general ancillary provisions and authority to make regulations.



**Bill 80****1984**

**An Act to provide for a Right of Access to  
Government Information in Ontario and to  
provide Protections respecting the  
Collection and Use of Personal Information**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.**—(1) In this Act,

Interpretation

- (a) “head”, in respect of a public institution, means,
  - (i) in the case of a Ministry, the member of the Executive Council presiding over the Ministry,
  - (ii) in the case of any other public institution, the person designated by the regulations;
- (b) “person” means an individual person or corporation or a partnership or unincorporated organization or association of persons;
- (c) “personal information” means information in a record respecting an individual person in which the person is identified by name or is readily identifiable by other means;
- (d) “public institution” means,
  - (i) a ministry of the Government of Ontario and the Office of the Assembly, and
  - (ii) any body or office that is established by or under an Act and is designated by the regulations as a public institution for the purposes of this Act,

but does not include the Archives of Ontario;

- (e) “record” means any recorded information, regardless of physical form or characteristics, that is under the control of a public institution, including but not limited to correspondence, memoranda, books, forms, plans, maps, drawings, diagrams, pictorial or graphic works, photographs, films, microforms, machine readable records and any copies;
- (f) “regulations” means the regulations made under this Act;
- (g) “third party” in respect of a request for access to a record under this Act, means any person other than the person who made the request or a public institution.

Application  
to  
pre-existing  
records

(2) This Act does not apply to records made before the 1st day of July, 1984.

Act subject  
to other  
specific  
provision

**2.—**(1) This Act is subject to any provision in any other Act providing for confidentiality of or access to information or records, except that where such confidentiality or access is subject to a discretion that is not subject to specific criteria, the discretion shall be exercised in accordance with the provisions of this Act.

Review of  
Act and  
confiden-  
tiality  
provisions by  
Select  
Committee

(2) A Select Committee of the Legislative Assembly is established composed of such members and with such powers as are provided by the Assembly to which is referred this Act and every provision in the Acts of the Legislature that requires information or records to be confidential, for the purpose of reviewing and reporting on the operation of this Act and examining such provisions and reporting recommendations as to their retention, deletion or amendment.

Repeal of  
subs. (2)

(3) Subsection (2) is repealed on a day that is three years after subsection (2) comes into force.

Application  
of Act re  
evidence in  
judicial  
proceeding

R.S.O. 1980,  
c. 393

**3.** This Act does not apply to access to or the use or disclosure of information contained in a record under the control of a public institution that is relevant to the subject-matter of a proceeding that is pending in a court or judicial or quasi-judicial tribunal or in a proposed proceeding for which notice has been given under subsection 7 (1) of the *Proceedings Against the Crown Act*, but such access, use or disclosure is governed by the law governing the compellability, production, admissibility and use of evidence in the proceeding, including the rule of law respecting Crown privilege.

4. This Act shall not be applied to preclude access to information that is not personal information and to which access by the public was available by custom or practice immediately before this Act comes into force.

Pre-existing  
access  
preserved

## PART I

### ADMINISTRATION

5.—(1) The Chairman of the Management Board of Cabinet is responsible for the administration of this Act.

Responsible  
Minister

(2) Where, under this Act, a power or duty is granted to or vested in the Chairman of the Management Board of Cabinet, he may delegate, in writing, that power or duty to any officer of the Management Board of Cabinet, subject to such limitations, restrictions, conditions and requirements as he may set out in his delegation.

Delegation  
of  
Chairman's  
powers

6.—(1) There shall be appointed, as an officer of the Legislature, a Privacy and Information Commissioner to exercise the powers and perform the duties prescribed by this Act.

Privacy and  
Information  
Commis-  
sioner

(2) The Privacy and Information Commissioner shall be appointed by the Lieutenant Governor in Council on the address of the Assembly.

Appointment

(3) Subject to subsection (4), the Privacy and Information Commissioner shall hold office for a term of five years and may be reappointed for a further term or terms, but is removable at any time for cause by the Lieutenant Governor in Council on the address of the Assembly.

Term of  
office and  
removal

(4) The Privacy and Information Commissioner shall retire upon attaining the age of sixty-five years but, where he attains the age of sixty-five years before he has served five years in office, he shall retire upon serving five years in office.

Retirement

(5) The Privacy and Information Commissioner may appoint an officer of his staff to be Assistant Privacy and Information Commissioner.

Assistant  
Privacy and  
Information  
Commis-  
sioner

7.—(1) The Privacy and Information Commissioner shall devote himself exclusively to the duties of his office and shall not hold any other office under the Crown or engage in any other employment.

Terms of  
employment

(2) The *Public Service Act* and the *Public Service Superannuation Act* do not apply to the Privacy and Information Commissioner.

Idem  
R.S.O. 1980,  
cc. 418, 419

## Salary

**8.—**(1) The Privacy and Information Commissioner shall be paid a salary to be fixed by the Lieutenant Governor in Council.

## Idem

(2) The salary of the Privacy and Information Commissioner shall not be reduced except on the address of the Assembly.

## Expenses

(3) The Privacy and Information Commissioner is entitled to be paid reasonable travelling and living expenses while absent from his ordinary place of residence in the exercise of his functions under this Act.

Pension  
R.S.O. 1980,  
c. 236

(4) Part II of the *Legislative Assembly Retirement Allowances Act*, except sections 15 and 16, subsection 18 (5) and clause 19 (2) (a), applies with necessary modifications to the Privacy and Information Commissioner in the same manner as if he were a member of the Legislative Assembly and for the purpose,

- (a) “average annual remuneration” means the average annual salary of the Privacy and Information Commissioner during any five years of his service, which years need not be consecutive, during which his salary was highest; and
- (b) “remuneration” means the salary of the Privacy and Information Commissioner.

Temporary  
Privacy and  
Information  
Commis-  
sioner

**9.** In the event of the death or resignation of the Privacy and Information Commissioner while the Legislature is not in session or if he is unable or neglects to perform the functions of his office, the Lieutenant Governor in Council may appoint a temporary Privacy and Information Commissioner, to hold office for a term of not more than six months, who shall, while in such office, have the powers and duties and perform the functions of the Privacy and Information Commissioner and shall be paid such salary or other remuneration and expenses as the Lieutenant Governor in Council may fix.

## Staff

**10.—**(1) Subject to the approval of the Lieutenant Governor in Council, the Privacy and Information Commissioner may employ such officers and other employees as the Privacy and Information Commissioner considers necessary for the efficient operation of his office and may determine their salary and remuneration and terms and conditions of employment.

## Benefits

(2) The employee benefits applicable from time to time to the public servants of Ontario with respect to,



- (a) cumulative vacation and sick leave credits for regular attendance and payments in respect of such credits;
- (b) plans for group life insurance, medical-surgical insurance or long term income protection; and
- (c) the granting of leave of absence,

apply to the permanent and full-time employees of the Privacy and Information Commissioner and where such benefits are provided for in regulations made under the *Public Service Act*, the Privacy and Information Commissioner, or any person authorized in writing by him, may exercise the powers and duties of a Minister or Deputy Minister or of the Civil Service Commission under such regulations.

R.S.O. 1980,  
c. 418

(3) The *Public Service Superannuation Act* applies to the permanent and full-time probationary staff of the Privacy and Information Commissioner as though the Privacy and Information Commissioner were a commission designated by the Lieutenant Governor in Council under section 28 of that Act.

Employees' superannuation benefits  
R.S.O. 1980,  
c. 419

**11.**—(1) The Privacy and Information Commissioner may lease such premises and acquire such equipment and supplies as are necessary for the efficient operation of his office.

Premises and supplies

(2) The salary of the Privacy and Information Commissioner and the expenses required for the operation of his office are payable out of moneys appropriated therefor by the Legislature.

Salary and expenses

(3) The accounts and financial transactions of the office of the Privacy and Information Commissioner shall be audited annually by the Provincial Auditor.

Audit

## PART II

### ACCESS TO INFORMATION

**12.**—(1) The Chairman of the Management Board of Cabinet shall cause to be published, at least once each year, a publication containing,

Publication re public institutions

- (a) a description of the organization and responsibilities of each public institution, including details on the programs and functions of each division or branch of the institution;



- (b) a description of all classes of records under the control of each public institution;
- (c) identification of personal information record systems, and,
  - (i) the types of information maintained in the systems,
  - (ii) the principal uses of the information, and
  - (iii) the categories of persons of whom records are maintained in the systems;
- (d) a description of all manuals used by employees of each public institution in administering or carrying out any of the programs or activities of the public institution; and
- (e) the title and address of the appropriate officer for each public institution to whom requests for access to records under this Act should be sent.

Exempt  
material  
may be  
excluded

(2) Subsection (1) shall not be construed to require the publication of any information that the head of a public institution would be entitled or required to refuse to disclose under this Act.

Publication  
and bulletin  
to be made  
available

(3) The Chairman of the Management Board of Cabinet shall cause the publication to be offered for sale to the public and to be made available for inspection by the public throughout Ontario.

Right to  
access

**13.—**(1) Subject to the provisions of this Act, every person who is,

- (a) a Canadian citizen;
- (b) a permanent resident within the meaning of the *Immigration Act, 1976* (Canada); or
- (c) a corporation incorporated by or under a law of Canada or a province,

1976-77,  
c. 52 (Can.)

has a right to and shall on request be given access to the information contained in any record under the control of a public institution.

Personal  
information

(2) The right to access to information under this Part that is personal information is subject to Part III.

**14.** Notwithstanding any other provision of this Act, the head of a public institution shall, as soon as practicable, disclose to the public or persons affected any record if he has reasonable and probable grounds to believe that it is in the public interest to do so and that the record reveals a grave environmental, health or safety hazard to the public.

Obligation  
to disclose  
danger

#### EXEMPTIONS

**15.** The head of a public institution may refuse a request for access to a record that contains information,

Defence,  
intergovern-  
mental  
relations

(a) that could be expected to be injurious to the conduct of,

(i) intergovernmental relations by the Government of Canada or Ontario, or

(ii) the defence or security of Canada or any state allied or associated with Canada; or

(b) that was obtained in confidence, express or implied, from,

(i) the government of a foreign jurisdiction or an institution thereof,

(ii) an international organization of states or an institution thereof,

(iii) the Government of Canada or an agency, Crown corporation or other institution thereof,

(iv) the Government of another province or territory, or an agency, Crown corporation or other institution thereof, or

(v) a municipal government in Ontario or a local board thereof within the meaning of the *Municipal Affairs Act* or a similar municipal government or institution of local government outside of Ontario,

R.S.O. 1980,  
c. 303

unless the government or institution from which the information was obtained consents to the disclosure or makes public the information.

**16.—(1)** The head of a public institution shall refuse a request for access to a record that falls within any of the fol-

Cabinet  
documents

lowing classes or contains information about the contents of a record that falls within any of the following classes,

- (a) records created solely to present proposals, recommendations, explanations, analysis or policy options to the Executive Council or a committee thereof;
- (b) agenda or minutes of the Executive Council or a committee thereof or records recording deliberations or decisions of the Council or a committee thereof;
- (c) records of or reflecting consultations among Ministers on matters relating to the making of government decisions or the formulation of government policy;
- (d) records created solely to brief Ministers in relation to matters that are before, or are proposed to be brought before, the Executive Council or a committee thereof or for consultations referred to in clause (c).

Exception

(2) Subsection (1) does not apply in respect of a record where disclosure of the record is authorized by the Premier or a person delegated by the Premier.

Advice,  
recommendations  
of public  
servants

**17.**—(1) The head of a public institution may refuse a request for access to a record that contains,

- (a) consultations, deliberations, advice or recommendations among officials or employees of public institutions in the formulation of a decision on public policy or of experts or consultants retained for the purpose; or
- (b) draft legislation, draft orders in council or draft regulations under any Act.

Exception

(2) Subsection (1) does not apply to a record that,

- (a) contains an account of or a statement of the reasons for a decision that is made in the exercise of a discretionary power or judicial function and that affects the rights of a person;
- (b) the head of a public institution has publicly cited as the basis for making a decision or formulating a policy; or

(c) is more than twenty years old.

**18.—**(1) The head of a public institution may refuse a request for access to a record that contains,

Economic  
and other  
interests of  
Ontario

- (a) trade secrets or financial, commercial, scientific or technical information that belongs to the Government of Ontario or a public institution and has monetary value or potential monetary value;
- (b) scientific or technical information obtained through research by an employee of a public institution the disclosure of which could deprive the employee of priority of publication;
- (c) information the disclosure of which could prejudice the economic interests of a public institution or the competitive position of a public institution;
- (d) information the disclosure of which could be injurious to the financial interests of the Government of Ontario or the ability of the Government of Ontario to manage the economy of Ontario;
- (e) positions, plans, procedures, criteria or instructions to be applied to any negotiations carried on or to be carried on by or on behalf of a public institution or the Government of Ontario;
- (f) plans relating to the management of personnel or the administration of a public institution that have not yet been put into operation or made public;
- (g) information including the proposed plans, policies or projects of a public institution the disclosure of which could result in premature disclosure of a pending policy decision or undue financial benefit or loss to a person.

(2) The head of a public institution shall not refuse under subsection (1) a request for access to a record that contains the results of product or environmental testing carried out by or for a public institution, unless,

Exception

- (a) the testing was done as a service to a person, a group of persons or an organization other than a public institution and for a fee; or



- (b) the testing was conducted as preliminary or experimental tests for the purpose of developing methods of testing.

Law enforcement and investigations

**19.—**(1) The head of a public institution may refuse a request for access to a record that contains information gathered in or pertaining to the detection, investigation, prevention or prosecution of an offence or pertaining to the history, release or supervision of persons in custody, parolees or probationers or the security of correctional institutions and, without limiting the generality of the foregoing, including a record the disclosure of which may,

- (a) reveal investigative techniques and procedures currently in use or likely to be used;
- (b) disclose the identity of a confidential source of information or disclose information furnished by that source;
- (c) deprive a person of a fair trial or adjudication;
- (d) facilitate the escape from custody of a person who is under lawful detention or otherwise jeopardize the security of a centre for lawful detention;
- (e) reveal criminal intelligence information;
- (f) be helpful in the commission of an offence or tend to impede the detection of an offence; or
- (g) reveal security clearance information.

Exception

(2) Subsection (1) does not apply to,

- (a) a record on the degree of success achieved in a law enforcement program including statistical analyses; or
- (b) a record of inspections conducted by a public institution in the course of the administration of an Act,

unless disclosure of such a record may prejudice, interfere with or adversely affect any of the matters referred to in subsection (1).

Information provided by other law enforcement agencies

(3) The head of a public institution shall refuse a request for access to information that was provided by a law enforcement agency that is not a public institution or under the direct jurisdiction of a public institution.



(4) Where a request for access is to a record that is exempt from access under this section, the head of a public institution may refuse to confirm or deny whether or not such record exists or ever did exist and such refusal shall be deemed to be a decision to refuse access to a record for the purpose of section 43 (investigation of complaints).

Existence  
of record

**20.**—(1) The head of a public institution shall refuse a request for access to a record that contains,

Third party  
information

- (a) trade secrets of a third party;
- (b) financial, commercial, scientific or technical information that is supplied to a public institution by a third party in confidence, express or implied;
- (c) information the disclosure of which could reasonably be expected to result in financial loss or gain to, or could prejudice the competitive position of, a third party; or
- (d) information the disclosure of which could interfere with contractual or other negotiations of a third party.

(2) The head of a public institution shall not refuse under subsection (1) access to a record that,

Exception

- (a) is a record that is designated by the regulations as a record that may be released;
- (b) has been made public by the third party; or
- (c) the third party agrees to release.

(3) Where the head of a public institution gives access to a record from which is withheld information that he is required by subsection (1) to refuse access to, the head of the public institution shall advise the person requesting access that the information given is incomplete.

Advising  
information  
incomplete

**21.** The head of a public institution may refuse a request for access to a record if,

Refusal of  
access where  
information  
to be  
published

- (a) the record or the information contained in the record has been published or is currently available to the public; or
- (b) the head of the institution believes on reasonable grounds that the material in the record will be pub-

lished by a public institution, within ninety days after the request is made or within such further period of time as may be necessary for printing or translating the material for the purpose of printing it.

**Safety**

**22.**—(1) The head of a public institution shall refuse a request for access to a record that contains information the disclosure of which may,

- (a) threaten the mental or physical health or safety of a person; or
- (b) endanger the security of any thing against unauthorized entry, interference or use.

**Other exemptions**

(2) The head of a public institution may refuse a request for access to a record that contains information relating to testing or auditing procedures or techniques or details of specific tests to be given or audits to be conducted if the disclosure would prejudice the use or results of particular tests or audits.

**Idem**

(3) The head of a public institution may refuse a request for access to a record that contains an opinion or recommendation of a person acting as legal advisor to the Crown or a public institution but shall not give access to an opinion or recommendation that was given by a legal advisor in or at the request of the Ministry of the Attorney General without prior consultation with the Attorney General.

**Access by public institutions**

**23.** Nothing in this Act restricts access by a public institution or an agency or other institution thereof to information held by another public institution, except personal information to which Part III applies.

**Severability**

**24.** Where a request is made to a public institution for access to a record that contains information to which the head of the institution is authorized or required to refuse to give access under this Act, the head of the institution shall disclose as much of the record as can reasonably be severed without disclosing the information, directly or by implication.

**ACCESS PROCEDURE****Request**

**25.**—(1) A request for access to a record shall be made in writing to the public institution that has control of the record and shall provide sufficient detail to enable an employee of the institution with a reasonable effort to identify the record.

(2) Where a request does not contain sufficient detail to identify the record with a reasonable effort, the head of the public institution shall make inquiries of the person who made the request in order to identify the record and the request shall be deemed to have been made only when the record has been identified. Duty to assist

**26.** Where access to a record is requested under this Act, the head of the public institution to which the request has been made shall, within thirty days after the request is received, give written notice to the person who made the request indicating, Notice

- (a) that access to the record or part thereof will be given and the place where or manner in which access is available;
- (b) that access is refused and the reason for the refusal and the specific provision of this Act on which the refusal is based;
- (c) that access is refused for the reason that the record does not exist; or
- (d) that confirmation or denial of the existence of a record is refused under subsection 19 (4),

and, in the case of a refusal under this section, the notice shall state that the person who made the request has a right to request an investigation by the Privacy and Information Commissioner within thirty days after the notice is given.

**27.** Where a request for access to a record is made to a public institution that does not have the record requested, the head of the public institution shall use his best endeavours to transfer the request to the public institution that has the record or part thereof and the request shall be deemed to be made on the date it is received by the public institution that has the record or part of it. Referral to appropriate place

**28.—(1)** Where the head of a public institution receives a request for access under this Act to a record in which another public institution has a greater interest, the head of the institution shall, within fifteen days after the request is received, transfer the request and, if necessary, the record to the other public institution and the head of the institution transferring the request shall give written notice of the transfer and the date of the transfer to the person who made the request. Transfer of request

Determin-  
ation  
of greater  
interest

(2) Where two or more public institutions do not agree on which has the greater interest in a record, the Chairman of the Management Board of Cabinet shall designate the one that shall be deemed to have the greater interest.

Deemed  
request

(3) For the purposes of section 26, where a request is transferred under subsection (1), the request shall be deemed to have been made to the public institution on the date of the transfer.

Extension  
of time

**29.**—(1) The head of a public institution may extend the time for responding to a request set out in section 26 for a further period of time not to exceed forty-five days if,

- (a) meeting the original time limit would unreasonably interfere with the operations of the public institution;
- (b) consultations necessary to comply with the request cannot reasonably be completed within the original time limit; or
- (c) a notice of the request is given to a third party under section 32.

Notice of  
extension

(2) Where the head of a public institution decides to extend a time limit referred to in subsection (1), the head of the institution shall give notice of the extension to the person who made the request within thirty days after the request was received and the decision of the head of the public institution is final.

Costs

**30.**—(1) Where no provision is made for a charge or fee under any other Act, the head of a public institution to which a request for access to a record is made may require the person who made the request to pay,

- (a) a search charge for every hour of manual search required in excess of two hours to locate a record;
- (b) the costs of preparing the record for disclosure;
- (c) computer and other costs incurred in locating, retrieving, processing and copying a record; and
- (d) shipping costs.

Estimate  
of costs

(2) The head of a public institution shall, before giving access to records, give the person requesting access a reason-



able estimate of any amount that will be required to be paid under this Act that is over \$25.

(3) The head of a public institution may waive the payment of all or any part of an amount required to be paid under this Act where, in his opinion, it is fair and equitable to do so after considering, Waiver of payment

- (a) the extent to which the actual cost of processing, collecting and copying the record varies from the amount of the payment required by subsection (1);
- (b) whether payment of costs will cause a financial hardship for the person requesting the record;
- (c) whether dissemination of the record will benefit public health or safety;
- (d) whether the record will benefit the commercial interests of the person who made the request; and
- (e) the amount of the costs together with the fact that the record contains personal information relating to the person who requested it.

(4) Where money that is collected by a public institution under this section is required to be paid to the Treasurer of Ontario, the public institution may retain up to one-half of the money it collects to be applied towards its expenses in locating, collecting, processing and copying records. Disposition of payments

**31.—**(1) The head of a public institution may give access to a record by providing the person who made the request or his agent with a copy of the record, or, where it is not reasonably practicable to reproduce the record, by giving the person or his agent an opportunity to examine the record. Manner in which access to be given

(2) A person who is entitled to be given a copy of a record containing personal information shall attend personally at a place designated by the public institution and provide sufficient proof of his identity. Personal information

### THIRD PARTY PROCEDURE

**32.—**(1) Before the head of a public institution grants a request for access to a record, Notice to third party

- (a) that the head of the institution has reason to believe might contain information referred to in subsection 20 (1) that affects the interest of a third party; or



- (b) that is personal information coming within the exception in clause 37 (1) (g) and relating to a third party,

the head of the institution shall, within thirty days after the request is received, give written notice to the third party of the request and of the fact that the head of the institution proposes to give access to the record.

Waiver  
of notice

(2) A third party to whom a notice is required to be given under subsection (1) may waive the requirement, and where the third party has consented to the disclosure, the third party shall be deemed to have waived the requirement.

Right  
to make  
representations

(3) A third party who is given a third party notice under subsection (1) shall, within twenty days after the notice is given, be given the opportunity to make representations to the head of the institution concerning the proposed disclosure and the notice shall include a statement informing the third party of the right to make such representations.

Decision

(4) The head of the public institution shall make a decision whether or not to give access to the record within ten days after receiving representations from the third party or, where the third party does not make representations under subsection (3), within thirty days after the third party notice was given to the third party, and the head of the institution shall give written notice of the decision to the third party.

Representations  
to be  
in writing

(5) Representations made by a third party shall be made in writing unless the head of the public institution permits the representations to be made orally.

Contents  
of notice  
of decision  
to disclose

(6) A notice given under subsection (4) of a decision to give access to a record shall include,

- (a) a statement that the third party is entitled to request an investigation of the decision by the Privacy and Information Commissioner within thirty days after the notice is given; and
- (b) a statement that the person who requested access to the record will be given access thereto unless, within thirty days after the notice is given, an investigation of the decision is requested.

## PART III

## PRIVACY

**33.** There shall be an office to be known as the Data Protection Office, to advise the Chairman of the Management Board of Cabinet on all matters concerning the protection of the privacy of personal information and, without limiting the generality of the foregoing, to,

Data  
Protection  
Office

- (a) develop, apply and co-ordinate standards relating to the management of the systems of public institutions for acquiring, storing, using and disposing of personal information; and
- (b) institute and maintain a program of public information, and cause to be conducted research, in respect of the protection of privacy of personal information.

**34.** No personal information shall be collected by a public institution unless the information is collected for a purpose related to the administration of an existing or proposed program or activity of the institution or for the purposes of law enforcement.

Purpose of  
information

**35.—(1)** A public institution shall collect personal information directly from the person to whom it relates unless,

Manner of  
collection

- (a) by means of a report from a reporting agency in accordance with the *Consumer Reporting Act*;
- (b) the person consents to collection by indirect methods;
- (c) the information is information that is referred to in subsection 19 (1);
- (d) the information is collected for the purpose of the conduct of a proceeding in a court or judicial or quasi-judicial tribunal;
- (e) the information is collected and necessary for the purpose of determining eligibility in the course of processing an application made by or on behalf of the person to whom the information relates; or
- (f) the information is exempted from this subsection by the regulations.

R.S.O. 1980,  
c. 89

Statement  
of purpose

(2) A public institution that collects personal information that is required by subsection (1) to be collected directly from a person shall inform the person of the purpose for which the information is collected, unless the information is exempted from this subsection by the regulations.

Standard  
of accuracy

**36.**—(1) The head of a public institution shall ensure that personal information on the records of the institution is not used unless it is reasonably accurate and up to date.

## Exception

(2) Subsection (1) does not apply to personal information collected for law enforcement purposes if the head of the public institution informs the recipient of the information that it may not be reliable.

Request for  
access to  
personal  
information

**37.**—(1) The head of a public institution shall refuse a request under section 13 for access to a record that contains personal information, except,

- (a) to the person to whom the information relates as provided in section 38;
- (b) with the consent of the person to whom the information relates;
- (c) information that is necessary to protect the mental or physical health of any person;
- (d) information that is publicly available;
- (e) information for research or statistical purposes where,
  - (i) disclosure of the information has been approved by the Data Protection Office,
  - (ii) the head of the public institution is satisfied that the purpose for which the information is disclosed cannot reasonably be accomplished unless the information is provided in a form that would identify the person to whom it relates, and
  - (iii) the head of the public institution obtains assurances that are approved by the Data Protection Office that no subsequent disclosure of the information is made in a form that could reasonably be expected to identify the person to whom it relates;

- (f) the record is designated by the regulations as a record that may be released; or
- (g) information the disclosure of which would not result in an unwarranted invasion of privacy and is in the public interest.

(2) For the purposes of clause (1) (g) an unwarranted invasion of privacy shall be deemed to exist if the information is, Unwarranted invasion of privacy

- (a) a record relating to mental or physical health;
- (b) a law enforcement record, unless disclosure is required to prosecute the offence;
- (c) a personal record relating to the eligibility of a person for social service or welfare benefits;
- (d) an employment record, excluding information on the responsibilities of a public servant or his position or classification;
- (e) a personal financial record;
- (f) a record that includes an evaluation, recommendation or character reference of an individual; or
- (g) a record that includes racial, ethnic, religious or political information about an individual.

**38.**—(1) A person whose personal information is on a record of a public institution, or his agent, shall be given access to the record upon request and upon giving sufficient proof of his identity, subject to the limitations in Part II. Access to own record

(2) Notwithstanding subsection (1), the head of a public institution shall refuse a request for access to a record that contains personal information that relates to the physical or mental health of a person and a person licensed under the *Health Disciplines Act* or a psychologist certifies that examination of the record by the person would be detrimental to the mental or physical health or safety of the person. Health records

R.S.O. 1980, c. 196

**39.**—(1) Every person who is given access to a record that contains personal information in respect of himself is entitled to, Correction of record

- (a) request correction of the personal information contained in the record where the person believes there is an error or omission therein;



- (b) require it to be recorded that a correction was requested but not made; and
- (c) require where practicable that any person or body to whom the information has been disclosed within one year before the time a correction is requested or a notation is required under this section be notified of the correction or notation.

Idem

(2) Where a person disputes the accuracy or completeness of personal information contained in his record, the head of the public institution within a reasonable time shall use his best endeavours to confirm or complete the information and shall correct, supplement or delete the information in the record in accordance with good practice.

Use of  
personal  
information

**40.**—(1) Personal information under the control of a public institution shall not, without the consent of the person to whom it relates, be used by the public institution, except,

- (a) for the purpose for which the information was obtained or for a use consistent with that purpose; or
- (b) for a purpose for which the information may be disclosed under subsection (2).

Disclosure  
of personal  
information

(2) Personal information on a record under the control of a public institution may be disclosed in the conduct of public business,

- (a) for the purpose for which the information was obtained or for a use consistent with that purpose;
- (b) to another public institution or an agency or other institution thereof for research or statistical purposes if the head of the public institution,
  - (i) is satisfied that the purpose for which the information is disclosed cannot reasonably be accomplished unless the information is provided in a form that would identify the individual to whom it relates, and
  - (ii) no subsequent disclosure of the information is made in a form that could reasonably be expected to identify the individual to whom it relates;



- (c) for the purpose of complying with an Act of the Legislature or an Act of Parliament or a treaty, agreement or arrangement thereunder;
- (d) where the personal information is information referred to in subsection 19 (1),
  - (i) to a law enforcement agency, or
  - (ii) to make public the execution of a criminal process or the identity of a person sought in connection with the investigation of a crime;
- (e) for the purpose of locating a person in order to collect a debt owed by the person to the Crown or a public institution or to make a payment owed to the person by the Crown or public institution;
- (f) for use in a proceedings in a court or judicial or quasi-judicial tribunal involving the Crown in right of Ontario or the Crown in right of Canada or an agency, Crown corporation or other institution thereof, or a servant or employee of any of them;
- (g) to the office of the Provincial Auditor or any other person or body specified in the regulations for audit purposes;
- (h) for the purpose of internal management and administration of personnel;
- (i) to the Archivist for archival purposes;
- (j) to the Data Protection Office for the proper administration of this Act; or
- (k) in any other case, with the consent of the person to whom the information relates.

(3) Personal information may be made public by a public institution for any purpose where in the opinion of the head of the public institution,

Release of  
personal  
information  
to public

- (a) the public interest in the release clearly outweighs any invasion of privacy that could result from the release; or
- (b) the release would benefit the person to whom the information relates.

Notice of  
release

(4) The head of the public institution shall notify the Privacy and Information Commissioner and the Data Protection Office of any release of personal information under subsection (3) prior to the release and the Privacy and Information Commissioner may notify the person to whom the information relates of the release.

Idem

(5) Where the Privacy and Information Commissioner decides to notify a person under subsection (4), he shall advise the head of the public institution forthwith.

Opportunity  
for  
investigation

(6) Where notice has been given to a person under subsection (4), the head of the public institution shall not disclose the information until the person has had an opportunity to apply for an investigation under Part IV.

Record of  
disclosures

**41.** Where a public institution discloses a record containing personal information under section 37 or subsection 40 (2), it shall record the fact,

- (a) where practicable, on the record itself; or
- (b) where not practicable because of the physical form or characteristic of the record, in a ledger created for the purpose.

Offence

**42.—**(1) Every person who knowingly collects, uses or discloses personal information in contravention of this Part or the regulations is guilty of an offence and on conviction is liable to a fine of not more than \$2,000.

Consent of  
Chairman of  
Management  
Board

(2) No proceeding under this section shall be instituted except with the consent of the Chairman of Management Board of Cabinet.

## PART IV

### COMPLAINTS

Investiga-  
tion by  
Privacy and  
Information  
Commis-  
sioner

**43.—**(1) A person who has requested access to a record may apply to the Privacy and Information Commissioner for an investigation,

- (a) of a decision to refuse access to the record or any part; or
- (b) of the amount he is required to pay in respect of his request.

(2) A third party may apply to the Privacy and Information Commissioner for an investigation of a decision to disclose information that affects his interest.

Idem

(3) An application to the Privacy and Information Commissioner for an investigation shall be made within thirty days after the notice was given of the decision complained of.

Time for application

(4) Upon receiving an application for an investigation, the Privacy and Information Commissioner shall inform the head of the public institution concerned of the substance of the matter to be investigated.

Notice of application

(5) The *Ombudsman Act* does not apply in respect of a complaint for which a procedure is provided under this Part or to the Privacy and Information Commissioner, or his delegate, acting under this Part.

Application of R.S.O. 1980, c. 325

**44.—**(1) Every investigation under this Part by the Privacy and Information Commissioner shall be conducted in private.

Investigation in private

(2) In an investigation, the Privacy and Information Commissioner may require to be produced and may examine any record that is in the possession, custody or control of a public institution, notwithstanding Parts II and III or any other Act or privilege but subject to subsection (6), and may enter and inspect any premises occupied by a public institution for the purposes of the investigation.

Powers of Commissioner

(3) The Privacy and Information Commissioner shall not retain any information obtained from a record under subsection (2).

Retention of information by Commissioner

(4) Before entering any premises under subsection (2), the Privacy and Information Commissioner shall notify the head of the public institution occupying the premises of his purpose.

Notice of entry

(5) The Privacy and Information Commissioner may summon and examine on oath any person who, in the opinion of the Commissioner, has information relating to the matter complained of, and for that purpose the Commissioner may administer an oath.

Examination under oath

(6) The head of a public institution may require that the examination of a record by the Privacy and Information Commissioner be of the original at its site.

Examination on site

Information  
excluded

(7) The Privacy and Information Commissioner shall not examine a record or require it to be produced and shall not take evidence in respect of its contents where,

- (a) the clerk of the Executive Council certifies that the record is a record of the Executive Council; or
- (b) the Attorney General certifies that he has reasonable grounds for believing that the record is a record to which section 19 applies and that it is in the public interest for its contents or existence or non-existence to not be disclosed to the Commissioner.

Evidence  
privileged

(8) Anything said or any information supplied or any document or thing produced by a person in the course of an inquiry by or proceedings before the Privacy and Information Commissioner under this Act is privileged in the same manner as if the inquiry or proceedings were proceedings in a court.

Protection

(9) Except on the trial of a person for perjury in respect of his sworn testimony, no statement made or answer given by that or any other person in the course of an inquiry by or proceedings before the Privacy and Information Commissioner is admissible in evidence in any court or at any inquiry or in any other proceedings, and no evidence in respect of proceedings before the Privacy and Information Commissioner shall be given against any person.

Idem  
under  
R.S.C. 1970,  
c. E-10

(10) A person giving a statement or answer in the course of an inquiry or proceeding before the Privacy and Information Commissioner shall be informed by the Commissioner of his right to object to answer any question under section 5 of the *Canada Evidence Act*.

Prosecution

(11) No person is liable to prosecution for an offence against any Act, other than this Act, by reason of his compliance with a requirement of the Privacy and Information Commissioner under this section.

Representa-  
tions

(12) The person who requested access to the record and the head of the public institution concerned and third party, if any, shall be given an opportunity to make representations to the Privacy and Information Commissioner, but no person is entitled to be present during, to have access to or to comment on representations made to the Privacy and Information Commissioner by any other person.

Report

(13) The Privacy and Information Commissioner shall make a report of his investigation and his recommendations in respect of the matter investigated within ninety days after



receipt of the application and shall cause it to be delivered to the person requesting the investigation, the head of the public institution that is concerned and the clerk of the Executive Council.

(14) Where a proposed report recommends under subsection (13) that access be given to a record, or that the existence of a record be confirmed or denied, despite a refusal under section 19, the Privacy and Information Commissioner shall notify the Attorney General of his proposed report and shall not make the report if the Attorney General issues a certificate under subsection (15).

Recommendation under section 19

(15) The Attorney General, after consultation with the head of the public institution who made the refusal, may, within thirty days after receiving the notification under subsection (14), certify that he has reasonable grounds for believing that it is in the public interest that the report not be made.

Certificate of Attorney General

**45.** If any question arises whether the Privacy and Information Commissioner has jurisdiction under this Act, the Commissioner or the head of a public institution may, if he thinks fit, apply to the Divisional Court for a declaratory order determining the question.

Declaratory order

**46.—**(1) The Privacy and Information Commissioner and every person acting on behalf or under the direction of the Commissioner shall not disclose any information that comes to their knowledge in the performance of their duties and functions under this Part.

Confidentiality

(2) The Privacy and Information Commissioner or any person acting on behalf or under the direction of the Commissioner is not compellable to give evidence in a court, or in a proceedings of a judicial nature concerning anything coming to his knowledge in the exercise or performance of a power, duty or function under this Act.

Not compellable witness

(3) No proceeding lies against the Privacy and Information Commissioner or against any person acting on behalf or under the direction of the Commissioner, for anything done, reported or said in good faith in the course of the exercise or performance or purported exercise or performance of a power, duty or function under this Act.

Proceedings privileged

**47.—**(1) The Privacy and Information Commissioner may in writing delegate to any person, subject to such restrictions or limitations as the Commissioner may specify, any of the powers, duties or functions of the Privacy and Information

Delegation by Commissioner



Commissioner under this Act except the power to delegate under this section.

Exception re  
records under  
ss. 16 and 19

(2) The Privacy and Information Commissioner shall not delegate to a person other than the Assistant Privacy and Information Commissioner his power to require a record referred to in section 16 or 19 to be produced and examined.

Offence

**48.** Every person who, knowingly,

- (a) obstructs the Privacy and Information Commissioner in the performance of his functions under this Act; or
- (b) makes a false statement to or misleads or attempts to mislead the Privacy and Information Commissioner in the performance of his functions under this Act,

is guilty of an offence and on conviction is liable to a fine of not more than \$2,000.

Decision on  
implemen-  
tation of  
report

**49.** The head of the public institution in respect of which the Privacy and Information Commissioner makes a report after an investigation under this Part shall, within thirty days after receiving the report, notify the Privacy and Information Commissioner, the person who requested the investigation and any third party affected whether he will comply with the recommendations in the report or vary or reject them.

Report to  
Assembly

**50.** The Privacy and Information Commissioner shall file with the Chairman of Management Board of Cabinet a report in respect of each three month period, showing,

- (a) the instances where his report and recommendations made after an investigation have not been complied with; and
- (b) the instances where a certificate of the Attorney General is given under subsection 44 (7) or (15),

and the Chairman of Management Board of Cabinet shall cause the report to be laid before the Assembly within fifteen days after the report is filed with him if it is in session or, if not, at the commencement of the next ensuing session.

## PART V

## GENERAL

**51.**—(1) Where under this Act a power or duty is granted or vested in the head of a public institution, he may, in writing, delegate that power or duty to an officer or officers of the public institution subject to such limitations, restrictions, conditions and requirements as the head of the public institution may set out in his delegation.

Delegation  
of head's  
powers

(2) No action or other proceeding lies against the head of a public institution, or against a person acting on behalf or under the direction of the head of a public institution, for damages resulting from the disclosure or non-disclosure in good faith of a record or any part of a record under this Act, or from the failure to give a notice required under this Act if reasonable care is taken to give the required notice.

Protection  
from civil  
proceeding

(3) Subsection (2) does not by reason of subsections 5 (2) and (4) of the *Proceedings Against the Crown Act*, relieve the Crown of liability in respect of a tort committed by a person mentioned in subsection (2) to which it would otherwise be subject, and the Crown is liable under that Act for any such tort in a like manner as if subsection (2) had not been enacted.

Vicarious  
liability  
of Crown  
preserved  
R.S.O. 1980,  
c. 393

(4) Subsection (2) does not relieve a public institution that is designated by the regulations for the purposes of this section of liability in respect of a tort committed by a person mentioned in subsection (2) to which it would otherwise be subject and the public institution is liable for any such tort in a like manner as if subsection (2) had not been enacted.

Vicarious  
liability of  
certain public  
institutions  
preserved

(5) The head of a public institution shall report to the Chairman of Management Board of Cabinet after the close of its fiscal year on the administration of this Act within the institution.

Annual  
report by  
heads of  
public  
institutions

**52.** A notice that is required or authorized to be given under this Act may be given personally or by mailing it to the last-known address of the person to whom the notice is to be given, and a notice that is mailed shall be deemed to have been given on the fourth day after the date of mailing.

Notices

**53.**—(1) No decision, order, direction, declaration, ruling, investigation, review or recommendation proposed, made or purported to be made under this Act shall be questioned or reviewed in any Court, and no order shall be made or process entered or proceeding taken in any Court, whether by way of

Exclusion  
of judicial  
review

judicial review, injunction, declaratory judgment, certiorari, mandamus, prohibition, quo warranto, or otherwise to question, review, prohibit, compel or restrain such action.

Remedies  
exclusive

(2) No remedy shall lie for the infringement of a right arising under this Act except as provided for in this Act.

Application  
of  
R.S.O. 1980,  
c. 484

(3) The provisions of the *Statutory Powers Procedure Act* or a regulation made thereunder do not apply to any proceeding under this Act or a regulation made thereunder.

Annual  
report of  
Commis-  
sioner

**54.** The Privacy and Information Commissioner shall report annually upon the affairs of the Commissioner's office to the Speaker of the Assembly, who shall cause the report to be laid before the Assembly if it is in session or, if not, at the commencement of the next ensuing session.

Regulations

**55.—**(1) The Lieutenant Governor in Council may make regulations,

- (a) designating public institutions and heads of public institutions;
- (b) specifying the types of records that may be released for the purposes of clauses 20 (2) (a) and 37 (1) (f);
- (c) prescribing the amounts of and the manner of determining costs payable under section 30;
- (d) exempting any information or class of information from the application of subsection 35 (1) or (2) or section 40;
- (e) designating persons or bodies for the purpose of clause 40 (2) (g);
- (f) prescribing the nature and type of proof of identification or authorization as an agent that is sufficient for the purpose of subsections 31 (2) and 38 (1);
- (g) designating public institutions for the purpose of liability under subsection 51 (4);
- (h) designating any system on which predominantly personal information is recorded and prohibiting access to all records on the system;
- (i) providing for the disposal of records containing personal information;

- (j) regulating methods for transferring records between public institutions;
- (k) prescribing the procedures and forms to be used under this Act.

(2) A regulation made under subsection (1) shall be tabled in the Legislative Assembly and shall not be filed under the *Regulations Act* until at least thirty days have elapsed after the tabling.

Tabling in  
Assembly

R.S.O. 1980,  
c. 446

**56.** Subsection 10 (1) of the *Public Service Act*, being chapter 418 of the Revised Statutes of Ontario, 1980, is amended by inserting after “be” in the third line of the form of oath contained therein “authorized or”.

**57.** This Act comes into force on the 1st day of July, 1985.

Commence-  
ment

**58.** The short title of this Act is the *Privacy and Access to Information Act, 1984*.

Short title





**Bill 81**

**Private Member's Bill**

4TH SESSION, 32ND LEGISLATURE, ONTARIO

33 ELIZABETH II, 1984

# Bill 81

## An Act to amend the Milk Act

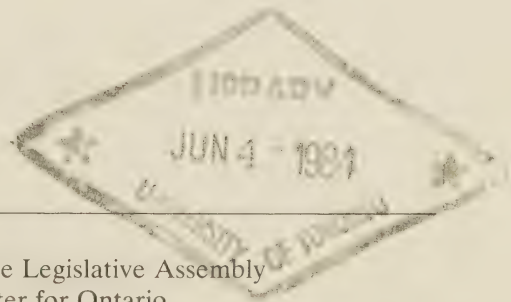
Mr. Swart

*1st Reading* May 25th, 1984

*2nd Reading*

*3rd Reading*

*Royal Assent*



#### EXPLANATORY NOTE

The Bill would permit The Milk Commission of Ontario to determine prices at the retail as well as at the wholesale level for milk, skim milk, buttermilk, flavoured milk and cream.

**Bill 81****1984****An Act to amend the Milk Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** Subsection 8 (1) of the *Milk Act*, being chapter 266 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following paragraph:

- 16a. determining from time to time the maximum and minimum prices that shall be paid at the wholesale and retail levels for fluid milk products or any class, variety or size of fluid milk products, determining different maximum and minimum prices for different parts of Ontario, and prohibiting the sale of fluid milk products at prices above or below the applicable maximum or minimum prices.

**2.** This Act comes into force on the day it receives Royal Assent. Commence-  
ment

**3.** The short title of this Act is the *Milk Amendment Act*, Short title  
1984.



# Bill 82

## An Act to amend the Theatres Act

The Hon. R. G. Elgie

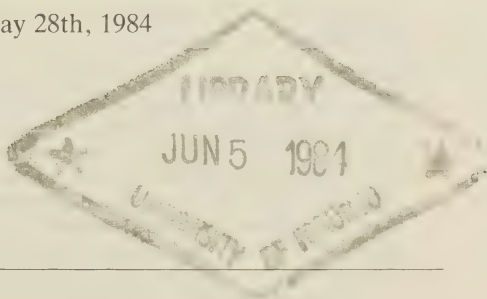
*Minister of Consumer and Commercial Relations*

*1st Reading* May 28th, 1984

*2nd Reading*

*3rd Reading*

*Royal Assent*





## EXPLANATORY NOTES

**SECTION 1.—Subsection 1.** The definition of Board is being amended to recognize the change in name effected by section 3 of the Bill.

**Subsections 2 and 3.** The changes in the interpretation section are complementary to section 3 of the Bill which expands the powers of the Board.

**Subsection 4.** The definition in clause 1 (n) being removed is complementary to section 21 of the Bill.

**SECTION 2.** The provision provides for the submission of an annual report by the Director to the Minister which report is to be laid before the Assembly.

**SECTION 3.** Section 3 of the Act sets up the Ontario Film Review Board and sets out its powers. The powers are extended to deal with films that are distributed in Ontario as well as exhibited. New provisions deal with the remuneration payable to board members and supervision of its affairs.

Categories into which films may be classified are set out as is the basis for each classification.

**SECTION 4.** Section 4 of the Act setting out the powers and duties of inspectors is recast. Changes are, in part, complementary to section 3 of the Bill. The inspector's power of entry is limited.

**SECTION 5.** The distribution of film is being regulated by the new section 35 of the Act (section 13 of the Bill). Subsections 6 (2) and (3) are complementary to this. Subsection 6 (1) is new and sets out additional grounds for refusing to issue a licence or for suspending or cancelling a licence. This is also complementary to section 4 of the Bill.

**SECTION 6.** The concept of "theatre" is being expanded to include premises where eight and sixteen millimetre film and tape are used. Now a Class B theatre is a new class and will include premises in which any film is used rather than just standard film.

**SECTION 7.—Subsection 1.** The amendment clarifies that when applying for a theatre licence a completed application is required.

**Subsection 2.** The grounds for refusing a licence are expanded to include a case where a corporate applicant has an officer or director whose conduct leads to the belief that there will not be compliance with the Act.

**SECTION 8.** Section 16 of the Act now provides that a municipality can not refuse to license a theatre licensed under the Act, license a theatre not licensed under the Act or charge a different licence fee than charged under the Act. The amendment provides an exception in respect of adult entertainment parlours.

**SECTION 9.** The requirement for approval of installation of projectors is being removed.

**SECTION 10.** Subsections 20 (2) and (3) now require the attendance of a uniformed matron where film is shown to children who are not accompanied by adults. Subsection 20 (4) now prohibits persons under eighteen years of age from purchasing a ticket to see a film classified as restricted. The new subsection 20 (2), replacing subsections 20 (2) and (3), removes the reference to matron and requires, simply, a uniformed attendant. The new subsections 20 (3) and (4) are complementary to the classifications set out in section 2 of the Bill and, in effect, obligates an adult who accompanies a child into a theatre showing a film classified as adult accompaniment to stay with the child.

Subsection 20 (6) is recast incorporating reference to the new subsection 20 (3).

**SECTION 11.** The provision requiring the display of signs in accordance with the regulations is being deleted. Requirements concerning signs will be in the regulations.

**SECTION 12.** The section is changed to recognize the classes of theatres that are set up by section 6 of the Bill.

**SECTION 13.** Sections 35 and 36 of the Act now deal with the approval of films by the Board. They are being amended to clarify that the Board classifies films as well as approves them. The decision to refuse to approve a film is to be made in accordance with prescribed guidelines. In addition the power of the Board to give conditional approval is specified.

Provision is also being made to provide for a reconsideration of the Board's decision in respect of approval or classification of film. The reconsideration would be by a panel of five members none of whom was involved in the first decision. Approval of films will not necessarily be indicated by a stamp embossed on the film.

The new section 35a permits the Board to recall a film previously approved if the chairman feels that the prescribed standards have changed.

**SECTION 14.** The provisions as recast shortens the existing subsection without change in intent. Also, the reference to certificates of approval is deleted. These will be dealt with in the regulations.

**SECTION 15.** The recast section 38 of the Act is complementary to section 13 of the Bill. Section 39 is recast to clarify the intent. Section 40 of the Act deals with approval of advertising. This provision is being expanded and the procedure clarified.

**SECTIONS 16 and 20.** The grounds for refusing a film exchange licence, a projector operating licence or a film exhibiting licence are expanded to include a case where a corporate applicant has an officer, director or shareholder whose conduct leads to the belief that there will not be compliance with the Act.

**SECTION 17.** Distribution of restricted film to persons under eighteen years of age is prohibited.

**SECTION 18.** The requirement to submit plans to construct a theatre are being removed from the Act and will be dealt with by regulation.

**SECTION 19.** The effect of the recast provision is to permit the operation of a projector in a licensed theatre without requiring a licence from the Director but to require a licence to exhibit film in premises that are not licensed as a theatre.

**SECTION 21.** The current section 62 of the Act is redundant. The *Financial Administration Act* provides for fees to be paid into the Consolidated Revenue Fund. The re-enacted section 62, on a different subject-matter, is self-explanatory.

**SECTION 22.** The regulation-making section is being amended to tie in with the changes made by the Bill.

**SECTION 23.** The amendment to the *Municipal Act* is complementary to section 6 of the Bill. The effect is to permit a municipality to license a theatre where live entertainment is featured as an adult entertainment parlour.



**Bill 82****1984****An Act to amend the Theatres Act**

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.—(1) Clause 1 (a) of the *Theatres Act*, being chapter 498 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:**

- (a) “Board” means the Ontario Film Review Board referred to in section 3.

**(2) Section 1 of the said Act is amended by adding thereto the following clause:**

- (ba) “distribute” means distribute for direct or indirect gain and includes rent, lease and sell.

**(3) Clause 1 (f) of the said Act is repealed and the following substituted therefor:**

- (f) “film exchange” means the business of distributing film.

**(4) Clause 1 (n) of the said Act is repealed.**

**2. Section 2 of the said Act is amended by adding thereto the following subsections:**

(3) The Director shall provide the Minister with an annual report on the administration of this Act and the regulations. Annual  
report

(4) Upon receiving a report under subsection (3), the Minister shall forthwith lay the report before the Assembly if it is in session or, if not, at the next ensuing session. Idem

**3. Section 3 of the said Act is repealed and the following substituted therefor:**

- Board      **3.**—(1) The board known as the Board of Censors is continued and shall be known as the Ontario Film Review Board and shall consist of the Director who shall be chairman of the Board and such other persons as the Lieutenant Governor in Council may appoint.
- Vice-chairman      (2) The Lieutenant Governor in Council may designate one or more of the members of the Board as a vice-chairman.
- Remuneration      (3) The members of the Board shall be paid such remuneration and expenses as may be fixed by the Lieutenant Governor in Council.
- Chairman      (4) The chairman of the Board shall have general supervision and direction over the conduct of the affairs of the Board.
- Powers      (5) The Board has power,
- (a) subject to the regulations, to approve, prohibit and regulate the exhibition and distribution of film in Ontario;
  - (b) when authorized by the person submitting film for approval, to remove from the film any portion that it does not approve of for exhibition or distribution;
  - (c) subject to the regulations, to approve, prohibit or regulate advertising in Ontario in connection with any film or the exhibition or distribution thereof;
  - (d) to classify films in accordance with the classifications set out in subsection (7); and
  - (e) to carry out its duties under this Act and the regulations.
- Idem      (6) The Board may designate one or more of its members to exercise the powers of the Board under clause (5) (c).
- Film classification      (7) Films may be classified in accordance with the following categories:
- 1. Family.
  - 2. Parental guidance.
  - 3. Adult accompaniment.
  - 4. Restricted.



(8) For purposes of subsection (7), where a film is classified Idem as,

- (a) family, the film is one that the Board considers appropriate for viewing by a person of any age;
- (b) parental guidance, the film is one that the Board considers every parent should exercise discretion in permitting a child to view;
- (c) adult accompaniment, the film is one the Board considers the viewing of which should be restricted to persons fourteen years of age or older or to persons younger than fourteen years of age who are accompanied by an adult; or
- (d) restricted, the film is one the Board considers the viewing of which should be restricted to persons eighteen years of age or older.

(9) Part 1 of the *Statutory Powers Procedure Act* does not apply to decisions made by the Board.

Non-application of R.S.O. 1980, c. 484

**4. Section 4 of the said Act is repealed and the following substituted therefor:**

**4.—**(1) The Lieutenant Governor in Council may appoint Inspectors inspectors to carry out such duties as may be assigned to them by this Act or the regulations.

(2) It is the duty of an inspector and the inspector has Powers and duty power,

- (a) to inspect, at reasonable times, theatres, any other premises where film is exhibited and business premises occupied by film exchanges to ensure that the provisions of this Act and the regulations are complied with;
- (b) to supervise projectionist's examinations and tests;
- (c) by written order, to prohibit the use or exhibition of any film that the inspector believes, on reasonable and probable grounds, is not safe to use or exhibit;
- (d) by written order, to prohibit the use of a projector that the inspector believes, on reasonable and probable grounds, was operated contrary to this Act or the regulations;

- (e) subject to subsection (5), in the performance of a duty, to enter any theatre or other premises in which film is exhibited or that is occupied by a film exchange.

Order to  
hand over

(3) Where, on reasonable and probable grounds, an inspector believes that a projector was operated or a film or advertising was exhibited, used or offered for distribution contrary to this Act or the regulations, the inspector may, by written order, direct that the projector, film or advertising, as the case may be, be turned over to the inspector.

Order to  
retain

(4) Where an order under subsection (3) is not complied with immediately, the inspector may, by written order, direct that the subject-matter of the order not be removed from the premises, destroyed or altered in any manner for a period of ten days except under lawful authority.

Power  
to enter  
restricted

(5) The powers set out in clauses (2) (a) and (e) do not permit an inspector,

- (a) to enter any place actually being used as a dwelling without the consent of the occupier; or
- (b) to use force in the exercise of a power of entry and inspection,

except under the authority of a warrant.

Warrant

(6) Where, upon an *ex parte* application by an inspector, a justice of the peace is satisfied by information, under oath,

- (a) that there is reasonable ground for believing that it is necessary to enter a particular building or premises for the administration of this Act or the regulations and,
  - (i) a reasonable, unsuccessful effort to effect entry without the use of force has been made, or
  - (ii) there is reasonable ground for belief that entry would be denied without a warrant; or
- (b) that an order issued under subsection (3) has not been complied with,

the justice of the peace may issue a warrant authorizing an inspector, with such police officers as are required to assist, to enter the building premises and to take any action that an

inspector may take under this Act and to remove and hold any projector that the inspector believes, on reasonable and probable grounds, was operated or any film or advertising that the inspector believes, on reasonable or probable grounds, was exhibited, used or offered for distribution contrary to this Act or the regulations, and to use such force as may be necessary.

(7) An entry under a warrant may be made only between sunrise and sunset unless the warrant specifies otherwise. Limitation

(8) The Deputy Minister of Consumer and Commercial Relations shall issue a certificate of appointment to every inspector appointed under this Act which certificate shall contain a photograph of the inspector. Identification

(9) Every inspector, while exercising any powers or performing any duties under this Act shall produce a certificate of appointment upon request. Idem

**5. Section 6 of the said Act is repealed and the following substituted therefor:**

**6.—**(1) Non-compliance with an order issued under this Act directed to a licensee under this Act or contravention of a term or condition of a licence is grounds for which the Director may, after a hearing, refuse to renew or suspend or cancel the licence of the person to whom the order was directed or, in the case of a contravention of a term or condition, the licensee. Cancellation, etc., of licence for non-compliance with order or contravention of term

(2) Any person to whom an inspector has issued an order or who claims an interest in any projector, film or advertising turned over to or removed by an inspector may, within ten days after the issue of the order or after removal, apply to the Director for a review of the order or release of the projector, film or advertising and the Director may, after a hearing, confirm, vary or annul the order of the inspector or direct the release of the projector, film or advertising. Review of inspector's order

(3) Where a projector, film or advertising has been turned over to or removed by an inspector, Forfeiture of projector, etc.

(a) if no application for a review of the removal is made to the Director within ten days after the removal; or

(b) if the Director finds after a hearing that the projector, film or advertising was installed, used,

distributed, offered for distribution or exhibited in contravention of this Act or the regulations,

the Director may, subject to appeal, direct that the projector, film or advertising if forfeited to the Crown.

**6. Sections 10 and 11 of the said Act are repealed and the following substituted therefor:**

Classification  
of theatres

**10.** Theatres are classified and defined as follows:

1. Class A theatre means premises in which standard film is used to exhibit moving pictures.
2. Class B theatre means premises used primarily for the exhibition of film other than standard film.
3. Class C theatre means any premises in which film is exhibited and viewed by the public from vehicles and commonly known as a drive-in theatre.

Theatre  
licence  
required

**11.** No person shall use any premises as a Class A, B or C theatre without an appropriate licence therefor under this Act.

**7.—(1)** Subsection 12 (1) of the said Act is amended by inserting after “entitled” in the second line “upon submitting a completed application and”.

**(2)** Subsection 12 (2) of the said Act is amended by striking out “or” at the end of clause (a), by adding “or” at the end of clause (b) and by adding thereto the following clause:

- (c) the applicant is a corporation and the past conduct of an officer, director or shareholder affords reasonable grounds for belief that the applicant will not comply with this Act and the regulations in operating the theatre.

**8. Section 16 of the said Act is amended by adding thereto the following subsection:**

Application  
of  
R.S.O. 1980,  
c. 302

**(2)** Subsection (1) does not apply in respect of the licensing of a theatre under section 222 of the *Municipal Act*.

**9. Section 18 of the said Act is repealed.**

**10.** Subsections 20 (2), (3), (4) and (5) of the said Act are repealed and the following substituted therefor:



(2) No film shall be exhibited in a theatre where a person under twelve years of age not accompanied by a person sixteen years of age or older is permitted to attend unless a person who is eighteen years of age or older dressed in a readily identifiable uniform is on duty in the theatre.

Uniformed  
attendant

(3) No person shall,

- (a) sell to a person apparently under fourteen years of age a ticket of admission to;
- (b) grant to a person apparently under fourteen years of age admission into; or
- (c) knowingly permit a person apparently under fourteen years of age to remain in,

Persons  
under 14  
attending  
adult  
accompani-  
ment film  
exhibition

a theatre or other premises where a film classified as adult accompaniment is about to be or is being exhibited unless the person apparently under fourteen years of age is accompanied by a person apparently eighteen years or more of age.

(4) No person shall,

- (a) sell to a person apparently under eighteen years of age a ticket of admission to;
- (b) grant to a person apparently under eighteen years of age admission into; or
- (c) knowingly permit a person apparently under eighteen years of age to remain in,

Persons  
under 18  
years  
prohibited  
from viewing  
restricted  
film  
exhibition

a theatre or other premises where a film classified as restricted is about to be or is being exhibited.

(5) Subsections (1), (3) and (4) do not apply where the person selling the ticket of admission or permitting admission to or remaining in the theatre or other premises has received satisfactory evidence that the person in question is the required age or older.

Proof  
of age

(6) In any prosecution for a contravention of subsection (1), (3) or (4), the court shall determine from the appearance of any person and other relevant circumstances whether he is apparently under the age referred to in subsection (1), (3) or (4).

Prosecution  
under  
subs. (1), (3)  
or (4)

## 11. Section 23 of the said Act is repealed.



**12. Section 25 of the said Act is repealed and the following substituted therefor:**

Operation  
of projector  
without  
licence

**25.** No person shall,

- (a) operate a projector designed for the use of standard film; or
- (b) operate a projector in a Class A or C theatre,

unless the person is licensed as a projectionist under this Act and no licensee, manager or person in charge of a Class A or C theatre shall permit any person to operate a projector in the theatre unless the person is licensed as a projectionist under this Act.

**13. Section 35 and the heading immediately preceding and section 36 of the said Act are repealed and the following substituted therefor:**

#### APPROVAL OF FILMS AND ADVERTISING

Approval  
of film

**35.—(1)** Before the exhibition or distribution in Ontario of a film, an application for approval to exhibit or distribute and for classification of the film shall be made to the Board.

Idem

(2) After viewing a film, the Board, in accordance with the criteria prescribed by the regulations, may refuse to approve the film for exhibition or distribution in Ontario.

Conditional

(3) The Board, having regard to the criteria prescribed by the regulations, may make an approval conditional upon the film being exhibited in designated locations and on specified dates only.

Quorum

(4) Except as otherwise provided, for the purpose of exercising a power under clause 3 (5) (a) or (d), three members of the Board constitute a quorum.

Review of  
decision

(5) Where a film has been submitted for approval and classification under subsection (1), the person submitting the film, on payment of the prescribed fee, may appeal the Board's decision by submitting the film for reconsideration by a panel of the Board and that panel, after viewing the film, shall make a decision on its approval and classification.

Decision  
final

(6) A decision by a panel of the Board under subsection (5) is final.

(7) The panel referred to in subsection (5) shall be composed of at least five members, none of whom had participated in a previous decision on the film. Panel

**35a.**—(1) Where the chairman of the Board is of the opinion that the criteria prescribed by regulation respecting subject-matter or content in films have changed since a film was originally approved and classified and that the film may not be entitled to the approval or classification determined at the time of the original decision, the chairman may require that the film be submitted for reconsideration by the Board. Reconsideration of film by Board

(2) Where a film is submitted for reconsideration under subsection (1), the provisions of section 35 apply with necessary modifications except that no fees shall be charged. Idem

**36.** Where a film is approved by the Board, the approval shall be indicated in the manner prescribed by the regulations. Indication of approval

**14. Section 37 of the said Act is repealed and the following substituted therefor:**

**37.** An application under section 35 shall be made in the manner prescribed by the regulations and be accompanied by the prescribed fee. Submission for approval

**15. Sections 38, 39 and 40 of the said Act are repealed and the following substituted therefor:**

**38.**—(1) No person shall exhibit, distribute or offer to distribute or cause to be exhibited, distributed or offered for distribution in Ontario any film that has not been approved by the Board. Exhibition of film

(2) No person shall exhibit or cause to be exhibited in Ontario any film that has been approved by the Board subject to any conditions except in accordance with those conditions. Idem

**39.** No person shall alter or cause to be altered, for the purpose of exhibition or distribution in Ontario, any film from its state as approved by the Board. Alteration of film

**40.**—(1) No person shall publicly display any advertising matter in connection with a film or the exhibition or distribution thereof, unless a sample of the advertising matter has been approved by the Board. Approval of advertising

(2) Before advertising matter in connection with a film or the exhibition or distribution thereof is publicly displayed in Samples to be submitted to Board

Ontario, a sample thereof, in duplicate, accompanied by the prescribed fee shall be submitted to the Board for approval.

Board may  
refuse to  
approve

(3) The Board, in accordance with the criteria prescribed by the regulations, may refuse to approve advertising matter submitted under subsection (2).

Second  
decision

(4) Where the Board has refused to approve advertising matter, the person submitting the advertising matter may require the Board to reconsider its decision and a panel of the Board composed of at least five persons, none of whom had participated in the original decision, shall consider the advertising matter and either confirm the original decision or substitute its own decision therefor.

Decision  
final

(5) A decision of the Board under subsection (4) is final.

Stamp of  
approval

(6) Where a sample of advertising matter is approved by the Board, it shall be so stamped and one sample shall be returned to the person who submitted it.

**16. Subsection 42 (2) of the said Act is amended by striking out "or" at the end of clause (a), by adding "or" at the end of clause (b) and by adding thereto the following clause:**

- (c) where the applicant is a corporation and the past conduct of an officer, director or shareholder affords reasonable grounds for belief that the applicant will not comply with this Act and the regulations in carrying on the business of a film exchange.

**17. The said Act is amended by adding thereto the following section:**

Distribution  
of restricted  
film

**47a.**—(1) No film exchange or agent or employee thereof shall distribute a film classified as restricted to any person apparently under the age of eighteen years.

Proof of  
age

(2) Subsection (1) does not apply where the agent or employee has received satisfactory evidence that the person in question is eighteen years of age or more.

Prosecution  
under  
subs. (1)

(3) In any prosecution for a contravention of subsection (1), the Court shall determine from the appearance of any person and other relevant circumstances whether he is apparently under eighteen years of age.

**18. Sections 50, 51 and 52 of the said Act are repealed.**

**19. Subsection 53 (1) of the said Act is repealed and the following substituted therefor:**

(1) No person shall operate or permit the operation of projection equipment to exhibit film in premises that are not licensed as a theatre without a licence for the equipment from the Director.

Licence to  
operate  
projector

**20. Subsection 55 (1) of the said Act is repealed and the following substituted therefor:**

(1) The Director may, after a hearing, refuse to issue a licence under section 53 or 54 where,

Refusal  
to issue

- (a) the applicant has previously been issued a licence of the type applied for if the licence was cancelled and the grounds for cancellation still exist; or
- (b) the applicant is a corporation and the past conduct of an officer, director or shareholder affords reasonable grounds for belief that the applicant will not comply with this Act and the regulations concerning the operating of projectors or exhibiting films.

**21. Section 62 of the said Act is repealed and the following substituted therefor:**

**62.** A statement as to,

Certificate  
by Director

- (a) the licensing or non-licensing of any person;
- (b) the classification of any film;
- (c) the approval or non-approval of any film; or
- (d) the approval or non-approval of any advertising,

purporting to be certified by the Director is, without proof of the office or signature of the Director, receivable in evidence as *prima facie* proof of the facts stated therein for all purposes in any action, proceeding or prosecution.

**22. Paragraphs 9, 15, 16, 17, 23, 24, 25, 28 and 30 of subsection 63 (1) of the said Act are repealed and the following substituted therefor:**

- 9. prohibiting and regulating the use, distribution or exhibition of film or any type or class thereof;









# Bill 82

## An Act to amend the Theatres Act



The Hon. R. G. Elgie

*Minister of Consumer and Commercial Relations*

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*1st Reading*      May 28th, 1984

*2nd Reading*      November 27th, 1984

*3rd Reading*

*Royal Assent*

*(Reprinted as amended by the Committee of the Whole House)*

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## EXPLANATORY NOTES

**SECTION 1.—Subsection 1.** The definition of Board is being amended to recognize the change in name effected by section 3 of the Bill.

**Subsections 2 and 3.** The changes in the interpretation section are complementary to section 3 of the Bill which expands the powers of the Board.

**Subsection 4.** The definition in clause 1 (n) being removed is complementary to section 21 of the Bill.

**SECTION 2.** The provision provides for the submission of an annual report by the Director to the Minister which report is to be laid before the Assembly.

**SECTION 3.** Section 3 of the Act sets up the Ontario Film Review Board and sets out its powers. The powers are extended to deal with films that are distributed in Ontario as well as exhibited. New provisions deal with the remuneration payable to board members and supervision of its affairs.

Categories into which films may be classified are set out as is the basis for each classification.

**SECTION 4.** Section 4 of the Act setting out the powers and duties of inspectors is recast. Changes are, in part, complementary to section 3 of the Bill. The inspector's power of entry is limited.

**SECTION 5.** The distribution of film is being regulated by the new section 35 of the Act (section 13 of the Bill). Subsections 6 (2) and (3) are complementary to this. Subsection 6 (1) is new and sets out additional grounds for refusing to issue a licence or for suspending or cancelling a licence. This is also complementary to section 4 of the Bill.

**SECTION 6.** The concept of "theatre" is being expanded to include premises where eight and sixteen millimetre film and tape are used. Now a Class B theatre is a new class and will include premises in which any film is used rather than just standard film.

**SECTION 7.—Subsection 1.** The amendment clarifies that when applying for a theatre licence a completed application is required.

**Subsection 2.** The grounds for refusing a licence are expanded to include a case where a corporate applicant has an officer or director whose conduct leads to the belief that there will not be compliance with the Act.

**SECTION 8.** Section 16 of the Act now provides that a municipality can not refuse to license a theatre licensed under the Act, license a theatre not licensed under the Act or charge a different licence fee than charged under the Act. The amendment provides an exception in respect of adult entertainment parlours.

**SECTION 9.** The requirement for approval of installation of projectors is being removed.

**SECTION 10.** Subsections 20 (2) and (3) now require the attendance of a uniformed matron where film is shown to children who are not accompanied by adults. Subsection 20 (4) now prohibits persons under eighteen years of age from purchasing a ticket to see a film classified as restricted. The new subsection 20 (2), replacing subsections 20 (2) and (3), removes the reference to matron and requires, simply, a uniformed attendant. The new subsections 20 (3) and (4) are complementary to the classifications set out in section 2 of the Bill and, in effect, obligates an adult who accompanies a child into a theatre showing a film classified as adult accompaniment to stay with the child.

Subsection 20 (6) is recast incorporating reference to the new subsection 20 (3).

**SECTION 11.** The provision requiring the display of signs in accordance with the regulations is being deleted. Requirements concerning signs will be in the regulations.

**SECTION 12.** The section is changed to recognize the classes of theatres that are set up by section 6 of the Bill.

**SECTION 13.** Sections 35 and 36 of the Act now deal with the approval of films by the Board. They are being amended to clarify that the Board classifies films as well as approves them. The decision to refuse to approve a film is to be made in accordance with prescribed guidelines. In addition the power of the Board to give conditional approval is specified.

Provision is also being made to provide for a reconsideration of the Board's decision in respect of approval or classification of film. The reconsideration would be by a panel of five members none of whom was involved in the first decision. Approval of films will not necessarily be indicated by a stamp embossed on the film.

The new section 35a permits the Board to recall a film previously approved if the chairman feels that the prescribed standards have changed.

**SECTION 14.** The provisions as recast shortens the existing subsection without change in intent. Also, the reference to certificates of approval is deleted. These will be dealt with in the regulations.

**SECTION 15.** The recast section 38 of the Act is complementary to section 13 of the Bill. Section 39 is recast to clarify the intent. Section 40 of the Act deals with approval of advertising. This provision is being expanded and the procedure clarified.

**SECTIONS 16 and 20.** The grounds for refusing a film exchange licence, a projector operating licence or a film exhibiting licence are expanded to include a case where a corporate applicant has an officer, director or shareholder whose conduct leads to the belief that there will not be compliance with the Act.

**SECTION 17.** Distribution of restricted film to persons under eighteen years of age is prohibited.

**SECTION 18.** The requirement to submit plans to construct a theatre are being removed from the Act and will be dealt with by regulation.

**SECTION 19.** The effect of the recast provision is to permit the operation of a projector in a licensed theatre without requiring a licence from the Director but to require a licence to exhibit film in premises that are not licensed as a theatre.

**SECTION 21.** The current section 62 of the Act is redundant. The *Financial Administration Act* provides for fees to be paid into the Consolidated Revenue Fund. The re-enacted section 62, on a different subject-matter, is self-explanatory.

**SECTION 22.** The regulation-making section is being amended to tie in with the changes made by the Bill.

**SECTION 23.** The amendment to the *Municipal Act* is complementary to section 6 of the Bill. The effect is to permit a municipality to license a theatre where live entertainment is featured as an adult entertainment parlour.





**Bill 82****1984****An Act to amend the Theatres Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.—(1) Clause 1 (a) of the *Theatres Act*, being chapter 498 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:**

(a) “Board” means the Ontario Film Review Board referred to in section 3.

**(2) Section 1 of the said Act is amended by adding thereto the following clause:**

(ba) “distribute” means distribute for direct or indirect gain and includes rent, lease and sell.

**(3) Clause 1 (f) of the said Act is repealed and the following substituted therefor:**

(f) “film exchange” means the business of distributing film.

**(4) Clause 1 (n) of the said Act is repealed.**

**2. Section 2 of the said Act is amended by adding thereto the following subsections:**

(3) The Director shall provide the Minister with an annual report on the administration of this Act and the regulations. Annual  
report

(4) Upon receiving a report under subsection (3), the Minister shall forthwith lay the report before the Assembly if it is in session or, if not, at the next ensuing session. Idem

**3. Section 3 of the said Act is repealed and the following substituted therefor:**

- Board           **3.**—(1) The board known as the Board of Censors is continued and shall be known as the Ontario Film Review Board and shall consist of the Director who shall be chairman of the Board and such other persons as the Lieutenant Governor in Council may appoint.
- Vice-chairman       (2) The Lieutenant Governor in Council may designate one or more of the members of the Board as a vice-chairman.
- Remuneration       (3) The members of the Board shall be paid such remuneration and expenses as may be fixed by the Lieutenant Governor in Council.
- Chairman           (4) The chairman of the Board shall have general supervision and direction over the conduct of the affairs of the Board.
- Powers             (5) The Board has power,
- (a) subject to the regulations, to approve, prohibit and regulate the exhibition and distribution of film in Ontario;
  - (b) when authorized by the person submitting film for approval, to remove from the film any portion that it does not approve of for exhibition or distribution;
  - (c) subject to the regulations, to approve, prohibit or regulate advertising in Ontario in connection with any film or the exhibition or distribution thereof;
  - (d) to classify films in accordance with the classifications set out in subsection (7); and
  - (e) to carry out its duties under this Act and the regulations.
- Idem               (6) The Board may designate one or more of its members to exercise the powers of the Board under clause (5) (c).
- Film classification   (7) Films may be classified in accordance with the following categories:
- 1. Family.
  - 2. Parental guidance.
  - 3. Adult accompaniment.
  - 4. Restricted.

(8) For purposes of subsection (7), where a film is classified as, Idem

- (a) family, the film is one that the Board considers appropriate for viewing by a person of any age;
- (b) parental guidance, the film is one that the Board considers every parent should exercise discretion in permitting a child to view;
- (c) adult accompaniment, the film is one the Board considers the viewing of which should be restricted to persons fourteen years of age or older or to persons younger than fourteen years of age who are accompanied by an adult; or
- (d) restricted, the film is one the Board considers the viewing of which should be restricted to persons eighteen years of age or older.

(9) Part 1 of the *Statutory Powers Procedure Act* does not apply to decisions made by the Board.

Non-application of  
R.S.O. 1980,  
c. 484

**4. Section 4 of the said Act is repealed and the following substituted therefor:**

**4.—**(1) The Lieutenant Governor in Council may appoint inspectors to carry out such duties as may be assigned to them by this Act or the regulations. Inspectors

(2) It is the duty of an inspector and the inspector has power, Powers  
and duty

- (a) to inspect, at reasonable times, theatres, any other premises where film is exhibited and business premises occupied by film exchanges to ensure that the provisions of this Act and the regulations are complied with;
- (b) to supervise projectionist's examinations and tests;
- (c) by written order, to prohibit the use or exhibition of any film that the inspector believes, on reasonable and probable grounds, is not safe to use or exhibit;
- (d) by written order, to prohibit the use of a projector that the inspector believes, on reasonable and probable grounds, was operated contrary to this Act or the regulations;

- (e) subject to subsection (5), in the performance of a duty, to enter any theatre or other premises in which film is exhibited or that is occupied by a film exchange.

Order to  
hand over

(3) Where, on reasonable and probable grounds, an inspector believes that a projector was operated or a film or advertising was exhibited, used or offered for distribution contrary to this Act or the regulations, the inspector may, by written order, direct that the projector, film or advertising, as the case may be, be turned over to the inspector.

Order to  
retain

(4) Where an order under subsection (3) is not complied with immediately, the inspector may, by written order, direct that the subject-matter of the order not be removed from the premises, destroyed or altered in any manner for a period of ten days except under lawful authority.

Power  
to enter  
restricted

(5) The powers set out in clauses (2) (a) and (e) do not permit an inspector,

- (a) to enter any place actually being used as a dwelling without the consent of the occupier; or
- (b) to use force in the exercise of a power of entry and inspection,

except under the authority of a warrant.

Warrant

(6) Where, upon an *ex parte* application by an inspector, a justice of the peace is satisfied by information, under oath,

- (a) that there is reasonable ground for believing that it is necessary to enter a particular building or premises for the administration of this Act or the regulations and,
  - (i) a reasonable, unsuccessful effort to effect entry without the use of force has been made, or
  - (ii) there is reasonable ground for belief that entry would be denied without a warrant; or
- (b) that an order issued under subsection (3) has not been complied with,

the justice of the peace may issue a warrant authorizing an inspector, with such police officers as are required to assist, to enter the building premises and to take any action that an



inspector may take under this Act and to remove and hold any projector that the inspector believes, on reasonable and probable grounds, was operated or any film or advertising that the inspector believes, on reasonable or probable grounds, was exhibited, used or offered for distribution contrary to this Act or the regulations, and to use such force as may be necessary.

(7) A justice of the peace shall not issue a warrant under subsection (6) to enter any place actually being used as a dwelling unless the inspector satisfies the justice of the peace, under oath, that he has reasonable grounds to believe the place is used as a business premises occupied by a film exchange.

(8) An entry under a warrant may be made only between sunrise and sunset unless the warrant specifies otherwise.

(9) The Deputy Minister of Consumer and Commercial Relations shall issue a certificate of appointment to every inspector appointed under this Act which certificate shall contain a photograph of the inspector.

(10) Every inspector, while exercising any powers or performing any duties under this Act shall produce a certificate of appointment upon request.

**5. Section 6 of the said Act is repealed and the following substituted therefor:**

**6.—**(1) Non-compliance with an order issued under this Act directed to a licensee under this Act or contravention of a term or condition of a licence is grounds for which the Director may, after a hearing, refuse to renew or suspend or cancel the licence of the person to whom the order was directed or, in the case of a contravention of a term or condition, the licensee.

(2) Any person to whom an inspector has issued an order or who claims an interest in any projector, film or advertising turned over to or removed by an inspector may, within ten days after the issue of the order or after removal, apply to the Director for a review of the order or release of the projector, film or advertising and the Director may, after a hearing, confirm, vary or annul the order of the inspector or direct the release of the projector, film or advertising.

(3) Where a projector, film or advertising has been turned over to or removed by an inspector,

- (a) if no application for a review of the removal is made to the Director within ten days after the removal; or
- (b) if the Director finds after a hearing that the projector, film or advertising was installed, used, distributed, offered for distribution or exhibited in contravention of this Act or the regulations,

the Director may, subject to appeal, direct that the projector, film or advertising is forfeited to the Crown.

**6. Sections 10 and 11 of the said Act are repealed and the following substituted therefor:**

Classification  
of theatres

**10.** Theatres are classified and defined as follows:

- 1. Class A theatre means premises in which standard film is used to exhibit moving pictures.
- 2. Class B theatre means premises used primarily for the exhibition of film other than standard film.
- 3. Class C theatre means any premises in which film is exhibited and viewed by the public from vehicles and commonly known as a drive-in theatre.

Theatre  
licence  
required

**11.** No person shall use any premises as a Class A, B or C theatre without an appropriate licence therefor under this Act.

**7.—(1)** Subsection 12 (1) of the said Act is amended by inserting after “entitled” in the second line “upon submitting a completed application and”.

**(2)** Subsection 12 (2) of the said Act is amended by striking out “or” at the end of clause (a), by adding “or” at the end of clause (b) and by adding thereto the following clause:

- (c) the applicant is a corporation and the past conduct of an officer, director or shareholder affords reasonable grounds for belief that the applicant will not comply with this Act and the regulations in operating the theatre.

**8. Section 16 of the said Act is amended by adding thereto the following subsection:**

Application  
of  
R.S.O. 1980,  
c. 302

**(2)** Subsection (1) does not apply in respect of the licensing of a theatre under section 222 of the *Municipal Act*.

**9. Section 18 of the said Act is repealed.**

**10. Subsections 20 (2), (3), (4) and (5) of the said Act are repealed and the following substituted therefor:**

(2) No film shall be exhibited in a theatre where a person under twelve years of age not accompanied by a person sixteen years of age or older is permitted to attend unless a person who is eighteen years of age or older dressed in a readily identifiable uniform is on duty in the theatre.

Uniformed  
attendant

(3) No person shall,

- (a) sell to a person apparently under fourteen years of age a ticket of admission to;
- (b) grant to a person apparently under fourteen years of age admission into; or
- (c) knowingly permit a person apparently under fourteen years of age to remain in,

Persons  
under 14  
attending  
adult  
accompani-  
ment film  
exhibition

a theatre or other premises where a film classified as adult accompaniment is about to be or is being exhibited unless the person apparently under fourteen years of age is accompanied by a person apparently eighteen years or more of age.

(4) No person shall,

- (a) sell to a person apparently under eighteen years of age a ticket of admission to;
- (b) grant to a person apparently under eighteen years of age admission into; or
- (c) knowingly permit a person apparently under eighteen years of age to remain in,

Persons  
under 18  
years  
prohibited  
from viewing  
restricted  
film  
exhibition

a theatre or other premises where a film classified as restricted is about to be or is being exhibited.

(5) Subsections (1), (3) and (4) do not apply where the person selling the ticket of admission or permitting admission to or remaining in the theatre or other premises has received satisfactory evidence that the person in question is the required age or older.

Proof  
of age

(6) In any prosecution for a contravention of subsection (1), (3) or (4), the court shall determine from the appearance of any person and other relevant circumstances whether he is

Prosecution  
under  
subs. (1), (3)  
or (4)

apparently under the age referred to in subsection (1), (3) or (4).

**11. Section 23 of the said Act is repealed.**

**12. Section 25 of the said Act is repealed and the following substituted therefor:**

Operation  
of projector  
without  
licence

**25. No person shall,**

- (a) operate a projector designed for the use of standard film; or
- (b) operate a projector in a Class A or C theatre,

unless the person is licensed as a projectionist under this Act and no licensee, manager or person in charge of a Class A or C theatre shall permit any person to operate a projector in the theatre unless the person is licensed as a projectionist under this Act.

**13. Section 35 and the heading immediately preceding and section 36 of the said Act are repealed and the following substituted therefor:**

APPROVAL OF FILMS AND ADVERTISING

Approval  
of film

**35.—(1)** Before the exhibition or distribution in Ontario of a film, an application for approval to exhibit or distribute and for classification of the film shall be made to the Board.

Idem

(2) After viewing a film, the Board, in accordance with the criteria prescribed by the regulations, may refuse to approve the film for exhibition or distribution in Ontario.

Conditional

(3) The Board, having regard to the criteria prescribed by the regulations, may make an approval conditional upon the film being exhibited in designated locations and on specified dates only.

Quorum

(4) Except as otherwise provided, for the purpose of exercising a power under clause 3 (5) (a) or (d), three members of the Board constitute a quorum.

Review of  
decision

(5) Where a film has been submitted for approval and classification under subsection (1), the person submitting the film, on payment of the prescribed fee, may appeal the Board's decision by submitting the film for reconsideration by a panel of the Board and that panel, after viewing the film, shall make a decision on its approval and classification.



(6) A decision by a panel of the Board under subsection (5) as to classification is final. Decision final

(7) The panel referred to in subsection (5) shall be composed of at least five members, none of whom had participated in a previous decision on the film. Panel

(8) A person who has appealed under subsection (5) may appeal the Board's decision as to approval to the Divisional Court in accordance with the rules of court and, where there is an appeal, the Minister is entitled to be heard. Appeal

(9) An appeal under subsection (8) may be made on question of law or fact or both and the Court may affirm or may rescind the decision of the Board and may direct the Board to take any action that the Board may take and as the Court considers proper. Powers of Court on appeal

**35a.**—(1) Where the chairman of the Board is of the opinion that the criteria prescribed by regulation respecting subject-matter or content in films have changed since a film was originally approved and classified and that the film may not be entitled to the approval or classification determined at the time of the original decision, the chairman may require that the film be submitted for reconsideration by the Board. Reconsideration of film by Board

(2) Where a film is submitted for reconsideration under subsection (1), the provisions of section 35 apply with necessary modifications except that no fees shall be charged. Idem

**36.** Where a film is approved by the Board, the approval shall be indicated in the manner prescribed by the regulations. Indication of approval

**14. Section 37 of the said Act is repealed and the following substituted therefor:**

**37.** An application under section 35 shall be made in the manner prescribed by the regulations and be accompanied by the prescribed fee. Submission for approval

**15. Sections 38, 39 and 40 of the said Act are repealed and the following substituted therefor:**

**38.**—(1) No person shall exhibit, distribute or offer to distribute or cause to be exhibited, distributed or offered for distribution in Ontario any film that has not been approved by the Board. Exhibition of film



Idem (2) No person shall exhibit or cause to be exhibited in Ontario any film that has been approved by the Board subject to any conditions except in accordance with those conditions.

Alteration of film **39.** No person shall alter or cause to be altered, for the purpose of exhibition or distribution in Ontario, any film from its state as approved by the Board.

Approval of advertising **40.—**(1) No person shall publicly display any advertising matter in connection with a film or the exhibition or distribution thereof, unless a sample of the advertising matter has been approved by the Board.

Samples to be submitted to Board (2) Before advertising matter in connection with a film or the exhibition or distribution thereof is publicly displayed in Ontario, a sample thereof, in duplicate, accompanied by the prescribed fee shall be submitted to the Board for approval.

Board may refuse to approve (3) The Board, in accordance with the criteria prescribed by the regulations, may refuse to approve advertising matter submitted under subsection (2).

Second decision (4) Where the Board has refused to approve advertising matter, the person submitting the advertising matter may require the Board to reconsider its decision and a panel of the Board composed of at least five persons, none of whom had participated in the original decision, shall consider the advertising matter and either confirm the original decision or substitute its own decision therefor.

Decision final (5) A decision of the Board under subsection (4) is final.

Stamp of approval (6) Where a sample of advertising matter is approved by the Board, it shall be so stamped and one sample shall be returned to the person who submitted it.

**16.** Subsection 42 (2) of the said Act is amended by striking out “or” at the end of clause (a), by adding “or” at the end of clause (b) and by adding thereto the following clause:

- (c) where the applicant is a corporation and the past conduct of an officer, director or shareholder affords reasonable grounds for belief that the applicant will not comply with this Act and the regulations in carrying on the business of a film exchange.

**17.** The said Act is amended by adding thereto the following section:

**47a.**—(1) No film exchange or agent or employee thereof shall distribute a film classified as restricted to any person apparently under the age of eighteen years. Distribution of restricted film

(2) Subsection (1) does not apply where the agent or employee has received satisfactory evidence that the person in question is eighteen years of age or more. Proof of age

(3) In any prosecution for a contravention of subsection (1), the Court shall determine from the appearance of any person and other relevant circumstances whether he is apparently under eighteen years of age. Prosecution under subs. (1)

**18. Sections 50, 51 and 52 of the said Act are repealed.**

**19. Subsection 53 (1) of the said Act is repealed and the following substituted therefor:**

(1) No person shall operate or permit the operation of projection equipment to exhibit film in premises that are not licensed as a theatre without a licence for the equipment from the Director. Licence to operate projector

**20. Subsection 55 (1) of the said Act is repealed and the following substituted therefor:**

(1) The Director may, after a hearing, refuse to issue a licence under section 53 or 54 where, Refusal to issue

- (a) the applicant has previously been issued a licence of the type applied for if the licence was cancelled and the grounds for cancellation still exist; or
- (b) the applicant is a corporation and the past conduct of an officer, director or shareholder affords reasonable grounds for belief that the applicant will not comply with this Act and the regulations concerning the operating of projectors or exhibiting films.

**21. Section 62 of the said Act is repealed and the following substituted therefor:**

**62.** A statement as to,

Certificate  
by Director

- (a) the licensing or non-licensing of any person;
- (b) the classification of any film;
- (c) the approval or non-approval of any film; or

- (d) the approval or non-approval of any advertising,

purporting to be certified by the Director is, without proof of the office or signature of the Director, receivable in evidence as *prima facie* proof of the facts stated therein for all purposes in any action, proceeding or prosecution.

**22. Paragraphs 9, 15, 16, 17, 23, 24, 25, 28 and 30 of subsection 63 (1) of the said Act are repealed and the following substituted therefor:**

9. prohibiting and regulating the use, distribution or exhibition of film or any type or class thereof;

. . . . .

15. prescribing building plans, documents and other information to be submitted to the Director with an application for a licence;

16. requiring signs to be displayed in respect of the exhibition of film classified by the Board and prescribing types of signs and the manner in which the signs shall be displayed;

17. prescribing the manner in which advertising matter in connection with any film classified by the Board or the exhibition or distribution thereof shall indicate that the film has been so classified;

- 17a. prescribing the manner that approval and classification of films shall be indicated;

. . . . .

- 19a. prescribing terms and conditions to which theatre licences and film exchange licences or any classes thereof are subject;

. . . . .

23. prescribing the fees to be paid for the classification or approval of films by the Board;

24. prescribing the manner of application and the material to be submitted to the Board for an approval under section 35;

- 24a. prescribing the fees to be paid for a review under section 35;

25. prescribing the fees to be paid with the submission of advertising matter under section 40;

. . . . .

28. providing for the issue, expiry and renewal of licences under section 53 and prescribing fees therefor;

. . . . .

30. exempting any theatre, film exchange, projector, film or person or any class or type thereof from any provision of this Act or the regulations;

31. prescribing criteria on which the Board may exercise its powers under sections 3, 35 and 40 including prescribing the film or advertising content or subject-matter that the Board may refuse to approve;

32. prescribing procedures concerning matters before the Board.

**23.—**(1) Subsection 222 (8) of the *Municipal Act*, being chapter 302 of the Revised Statutes of Ontario, 1980, is amended by striking out “licensed under the *Theatres Act* or” in the third line.

(2) Clause 222 (9) (e) of the said Act is repealed and the following substituted therefor:

- (e) “services” includes activities, facilities, performances, exhibitions, viewings and encounters but does not include the exhibition of film approved under the *Theatres Act*.

R.S.O. 1980,  
c. 498

**24.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Commence-  
ment

**25.** The short title of this Act is the *Theatres Amendment Act, 1984*.

Short title









56  
**Bill 82**

4TH SESSION, 32ND LEGISLATURE, ONTARIO

33 ELIZABETH II, 1984

**Bill 82***(Chapter 56  
Statutes of Ontario, 1984)***An Act to amend the Theatres Act****The Hon. R. G. Elgie***Minister of Consumer and Commercial Relations*

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<i>1st Reading</i>	May 28th, 1984
<i>2nd Reading</i>	November 27th, 1984
<i>3rd Reading</i>	December 14th, 1984
<i>Royal Assent</i>	December 14th, 1984

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## Bill 82

1984

**An Act to amend the Theatres Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.—(1) Clause 1 (a) of the *Theatres Act*, being chapter 498 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:**

- (a) “Board” means the Ontario Film Review Board referred to in section 3.

**(2) Section 1 of the said Act is amended by adding thereto the following clause:**

- (ba) “distribute” means distribute for direct or indirect gain and includes rent, lease and sell.

**(3) Clause 1 (f) of the said Act is repealed and the following substituted therefor:**

- (f) “film exchange” means the business of distributing film.

**(4) Clause 1 (n) of the said Act is repealed.**

**2. Section 2 of the said Act is amended by adding thereto the following subsections:**

(3) The Director shall provide the Minister with an annual report on the administration of this Act and the regulations. Annual  
report

(4) Upon receiving a report under subsection (3), the Minister shall forthwith lay the report before the Assembly if it is in session or, if not, at the next ensuing session. Idem

**3. Section 3 of the said Act is repealed and the following substituted therefor:**



Board

**3.—(1)** The board known as the Board of Censors is continued and shall be known as the Ontario Film Review Board and shall consist of the Director who shall be chairman of the Board and such other persons as the Lieutenant Governor in Council may appoint.

Vice-chairman

(2) The Lieutenant Governor in Council may designate one or more of the members of the Board as a vice-chairman.

Remuneration

(3) The members of the Board shall be paid such remuneration and expenses as may be fixed by the Lieutenant Governor in Council.

Chairman

(4) The chairman of the Board shall have general supervision and direction over the conduct of the affairs of the Board.

Powers

(5) The Board has power,

- (a) subject to the regulations, to approve, prohibit and regulate the exhibition and distribution of film in Ontario;
- (b) when authorized by the person submitting film for approval, to remove from the film any portion that it does not approve of for exhibition or distribution;
- (c) subject to the regulations, to approve, prohibit or regulate advertising in Ontario in connection with any film or the exhibition or distribution thereof;
- (d) to classify films in accordance with the classifications set out in subsection (7); and
- (e) to carry out its duties under this Act and the regulations.

Idem

(6) The Board may designate one or more of its members to exercise the powers of the Board under clause (5) (c).

Film classification

(7) Films may be classified in accordance with the following categories:

- 1. Family.
- 2. Parental guidance.
- 3. Adult accompaniment.
- 4. Restricted.

(8) For purposes of subsection (7), where a film is classified as, Idem

- (a) family, the film is one that the Board considers appropriate for viewing by a person of any age;
- (b) parental guidance, the film is one that the Board considers every parent should exercise discretion in permitting a child to view;
- (c) adult accompaniment, the film is one the Board considers the viewing of which should be restricted to persons fourteen years of age or older or to persons younger than fourteen years of age who are accompanied by an adult; or
- (d) restricted, the film is one the Board considers the viewing of which should be restricted to persons eighteen years of age or older.

(9) Part 1 of the *Statutory Powers Procedure Act* does not apply to decisions made by the Board.

Non-application of  
R.S.O. 1980,  
c. 484

**4. Section 4 of the said Act is repealed and the following substituted therefor:**

**4.—**(1) The Lieutenant Governor in Council may appoint inspectors to carry out such duties as may be assigned to them by this Act or the regulations.

Inspectors

(2) It is the duty of an inspector and the inspector has power,

Powers  
and duty

- (a) to inspect, at reasonable times, theatres, any other premises where film is exhibited and business premises occupied by film exchanges to ensure that the provisions of this Act and the regulations are complied with;
- (b) to supervise projectionist's examinations and tests;
- (c) by written order, to prohibit the use or exhibition of any film that the inspector believes, on reasonable and probable grounds, is not safe to use or exhibit;
- (d) by written order, to prohibit the use of a projector that the inspector believes, on reasonable and probable grounds, was operated contrary to this Act or the regulations;

- (e) subject to subsection (5), in the performance of a duty, to enter any theatre or other premises in which film is exhibited or that is occupied by a film exchange.

Order to  
hand over

(3) Where, on reasonable and probable grounds, an inspector believes that a projector was operated or a film or advertising was exhibited, used or offered for distribution contrary to this Act or the regulations, the inspector may, by written order, direct that the projector, film or advertising, as the case may be, be turned over to the inspector.

Order to  
retain

(4) Where an order under subsection (3) is not complied with immediately, the inspector may, by written order, direct that the subject-matter of the order not be removed from the premises, destroyed or altered in any manner for a period of ten days except under lawful authority.

Power  
to enter  
restricted

(5) The powers set out in clauses (2) (a) and (e) do not permit an inspector,

- (a) to enter any place actually being used as a dwelling without the consent of the occupier; or
- (b) to use force in the exercise of a power of entry and inspection,

except under the authority of a warrant.

Warrant

(6) Where, upon an *ex parte* application by an inspector, a justice of the peace is satisfied by information, under oath,

- (a) that there is reasonable ground for believing that it is necessary to enter a particular building or premises for the administration of this Act or the regulations and,
  - (i) a reasonable, unsuccessful effort to effect entry without the use of force has been made, or
  - (ii) there is reasonable ground for belief that entry would be denied without a warrant; or
- (b) that an order issued under subsection (3) has not been complied with,

the justice of the peace may issue a warrant authorizing an inspector, with such police officers as are required to assist, to enter the building premises and to take any action that an

inspector may take under this Act and to remove and hold any projector that the inspector believes, on reasonable and probable grounds, was operated or any film or advertising that the inspector believes, on reasonable or probable grounds, was exhibited, used or offered for distribution contrary to this Act or the regulations, and to use such force as may be necessary.

(7) A justice of the peace shall not issue a warrant under subsection (6) to enter any place actually being used as a dwelling unless the inspector satisfies the justice of the peace, under oath, that he has reasonable grounds to believe the place is used as a business premises occupied by a film exchange. Idem

(8) An entry under a warrant may be made only between sunrise and sunset unless the warrant specifies otherwise. Limitation

(9) The Deputy Minister of Consumer and Commercial Relations shall issue a certificate of appointment to every inspector appointed under this Act which certificate shall contain a photograph of the inspector. Identification

(10) Every inspector, while exercising any powers or performing any duties under this Act shall produce a certificate of appointment upon request. Idem

**5. Section 6 of the said Act is repealed and the following substituted therefor:**

**6.—**(1) Non-compliance with an order issued under this Act directed to a licensee under this Act or contravention of a term or condition of a licence is grounds for which the Director may, after a hearing, refuse to renew or suspend or cancel the licence of the person to whom the order was directed or, in the case of a contravention of a term or condition, the licensee. Cancellation, etc., of licence for non-compliance with order or contravention of term

(2) Any person to whom an inspector has issued an order or who claims an interest in any projector, film or advertising turned over to or removed by an inspector may, within ten days after the issue of the order or after removal, apply to the Director for a review of the order or release of the projector, film or advertising and the Director may, after a hearing, confirm, vary or annul the order of the inspector or direct the release of the projector, film or advertising. Review of inspector's order

(3) Where a projector, film or advertising has been turned over to or removed by an inspector, Forfeiture of projector, etc.



- (a) if no application for a review of the removal is made to the Director within ten days after the removal; or
- (b) if the Director finds after a hearing that the projector, film or advertising was installed, used, distributed, offered for distribution or exhibited in contravention of this Act or the regulations,

the Director may, subject to appeal, direct that the projector, film or advertising is forfeited to the Crown.

**6. Sections 10 and 11 of the said Act are repealed and the following substituted therefor:**

Classification  
of theatres

**10.** Theatres are classified and defined as follows:

- 1. Class A theatre means premises in which standard film is used to exhibit moving pictures.
- 2. Class B theatre means premises used primarily for the exhibition of film other than standard film.
- 3. Class C theatre means any premises in which film is exhibited and viewed by the public from vehicles and commonly known as a drive-in theatre.

Theatre  
licence  
required

**11.** No person shall use any premises as a Class A, B or C theatre without an appropriate licence therefor under this Act.

**7.—(1)** Subsection 12 (1) of the said Act is amended by inserting after “entitled” in the second line “upon submitting a completed application and”.

**(2)** Subsection 12 (2) of the said Act is amended by striking out “or” at the end of clause (a), by adding “or” at the end of clause (b) and by adding thereto the following clause:

- (c) the applicant is a corporation and the past conduct of an officer, director or shareholder affords reasonable grounds for belief that the applicant will not comply with this Act and the regulations in operating the theatre.

**8.** Section 16 of the said Act is amended by adding thereto the following subsection:

Application  
of  
R.S.O. 1980,  
c. 302

**(2)** Subsection (1) does not apply in respect of the licensing of a theatre under section 222 of the *Municipal Act*.



**9. Section 18 of the said Act is repealed.**

**10. Subsections 20 (2), (3), (4) and (5) of the said Act are repealed and the following substituted therefor:**

(2) No film shall be exhibited in a theatre where a person under twelve years of age not accompanied by a person sixteen years of age or older is permitted to attend unless a person who is eighteen years of age or older dressed in a readily identifiable uniform is on duty in the theatre.

Uniformed  
attendant

(3) No person shall,

- (a) sell to a person apparently under fourteen years of age a ticket of admission to;
- (b) grant to a person apparently under fourteen years of age admission into; or
- (c) knowingly permit a person apparently under fourteen years of age to remain in,

Persons  
under 14  
attending  
adult  
accompani-  
ment film  
exhibition

a theatre or other premises where a film classified as adult accompaniment is about to be or is being exhibited unless the person apparently under fourteen years of age is accompanied by a person apparently eighteen years or more of age.

(4) No person shall,

- (a) sell to a person apparently under eighteen years of age a ticket of admission to;
- (b) grant to a person apparently under eighteen years of age admission into; or
- (c) knowingly permit a person apparently under eighteen years of age to remain in,

Persons  
under 18  
years  
prohibited  
from viewing  
restricted  
film  
exhibition

a theatre or other premises where a film classified as restricted is about to be or is being exhibited.

(5) Subsections (1), (3) and (4) do not apply where the person selling the ticket of admission or permitting admission to or remaining in the theatre or other premises has received satisfactory evidence that the person in question is the required age or older.

Proof  
of age

(6) In any prosecution for a contravention of subsection (1), (3) or (4), the court shall determine from the appearance of any person and other relevant circumstances whether he is

Prosecution  
under  
subs. (1), (3)  
or (4)

apparently under the age referred to in subsection (1), (3) or (4).

**11. Section 23 of the said Act is repealed.**

**12. Section 25 of the said Act is repealed and the following substituted therefor:**

Operation  
of projector  
without  
licence

**25. No person shall,**

- (a) operate a projector designed for the use of standard film; or
- (b) operate a projector in a Class A or C theatre,

unless the person is licensed as a projectionist under this Act and no licensee, manager or person in charge of a Class A or C theatre shall permit any person to operate a projector in the theatre unless the person is licensed as a projectionist under this Act.

**13. Section 35 and the heading immediately preceding and section 36 of the said Act are repealed and the following substituted therefor:**

APPROVAL OF FILMS AND ADVERTISING

Approval  
of film

**35.—**(1) Before the exhibition or distribution in Ontario of a film, an application for approval to exhibit or distribute and for classification of the film shall be made to the Board.

Idem

(2) After viewing a film, the Board, in accordance with the criteria prescribed by the regulations, may refuse to approve the film for exhibition or distribution in Ontario.

Conditional

(3) The Board, having regard to the criteria prescribed by the regulations, may make an approval conditional upon the film being exhibited in designated locations and on specified dates only.

Quorum

(4) Except as otherwise provided, for the purpose of exercising a power under clause 3 (5) (a) or (d), three members of the Board constitute a quorum.

Review of  
decision

(5) Where a film has been submitted for approval and classification under subsection (1), the person submitting the film, on payment of the prescribed fee, may appeal the Board's decision by submitting the film for reconsideration by a panel of the Board and that panel, after viewing the film, shall make a decision on its approval and classification.

(6) A decision by a panel of the Board under subsection (5) as to classification is final. Decision final

(7) The panel referred to in subsection (5) shall be composed of at least five members, none of whom had participated in a previous decision on the film. Panel

(8) A person who has appealed under subsection (5) may appeal the Board's decision as to approval to the Divisional Court in accordance with the rules of court and, where there is an appeal, the Minister is entitled to be heard. Appeal

(9) An appeal under subsection (8) may be made on question of law or fact or both and the Court may affirm or may rescind the decision of the Board and may direct the Board to take any action that the Board may take and as the Court considers proper. Powers of Court on appeal

**35a.**—(1) Where the chairman of the Board is of the opinion that the criteria prescribed by regulation respecting subject-matter or content in films have changed since a film was originally approved and classified and that the film may not be entitled to the approval or classification determined at the time of the original decision, the chairman may require that the film be submitted for reconsideration by the Board. Reconsideration of film by Board

(2) Where a film is submitted for reconsideration under subsection (1), the provisions of section 35 apply with necessary modifications except that no fees shall be charged. Idem

**36.** Where a film is approved by the Board, the approval shall be indicated in the manner prescribed by the regulations. Indication of approval

**14. Section 37 of the said Act is repealed and the following substituted therefor:**

**37.** An application under section 35 shall be made in the manner prescribed by the regulations and be accompanied by the prescribed fee. Submission for approval

**15. Sections 38, 39 and 40 of the said Act are repealed and the following substituted therefor:**

**38.**—(1) No person shall exhibit, distribute or offer to distribute or cause to be exhibited, distributed or offered for distribution in Ontario any film that has not been approved by the Board. Exhibition of film

Idem

(2) No person shall exhibit or cause to be exhibited in Ontario any film that has been approved by the Board subject to any conditions except in accordance with those conditions.

Alteration  
of film

**39.** No person shall alter or cause to be altered, for the purpose of exhibition or distribution in Ontario, any film from its state as approved by the Board.

Approval of  
advertising

**40.**—(1) No person shall publicly display any advertising matter in connection with a film or the exhibition or distribution thereof, unless a sample of the advertising matter has been approved by the Board.

Samples to  
be  
submitted to  
Board

(2) Before advertising matter in connection with a film or the exhibition or distribution thereof is publicly displayed in Ontario, a sample thereof, in duplicate, accompanied by the prescribed fee shall be submitted to the Board for approval.

Board may  
refuse to  
approve

(3) The Board, in accordance with the criteria prescribed by the regulations, may refuse to approve advertising matter submitted under subsection (2).

Second  
decision

(4) Where the Board has refused to approve advertising matter, the person submitting the advertising matter may require the Board to reconsider its decision and a panel of the Board composed of at least five persons, none of whom had participated in the original decision, shall consider the advertising matter and either confirm the original decision or substitute its own decision therefor.

Decision  
final

(5) A decision of the Board under subsection (4) is final.

Stamp of  
approval

(6) Where a sample of advertising matter is approved by the Board, it shall be so stamped and one sample shall be returned to the person who submitted it.

**16.** Subsection 42 (2) of the said Act is amended by striking out “or” at the end of clause (a), by adding “or” at the end of clause (b) and by adding thereto the following clause:

- (c) where the applicant is a corporation and the past conduct of an officer, director or shareholder affords reasonable grounds for belief that the applicant will not comply with this Act and the regulations in carrying on the business of a film exchange.

**17.** The said Act is amended by adding thereto the following section:



**47a.**—(1) No film exchange or agent or employee thereof shall distribute a film classified as restricted to any person apparently under the age of eighteen years. Distribution of restricted film

(2) Subsection (1) does not apply where the agent or employee has received satisfactory evidence that the person in question is eighteen years of age or more. Proof of age

(3) In any prosecution for a contravention of subsection (1), the Court shall determine from the appearance of any person and other relevant circumstances whether he is apparently under eighteen years of age. Prosecution under subs. (1)

**18. Sections 50, 51 and 52 of the said Act are repealed.**

**19. Subsection 53 (1) of the said Act is repealed and the following substituted therefor:**

(1) No person shall operate or permit the operation of projection equipment to exhibit film in premises that are not licensed as a theatre without a licence for the equipment from the Director. Licence to operate projector

**20. Subsection 55 (1) of the said Act is repealed and the following substituted therefor:**

(1) The Director may, after a hearing, refuse to issue a licence under section 53 or 54 where, Refusal to issue

- (a) the applicant has previously been issued a licence of the type applied for if the licence was cancelled and the grounds for cancellation still exist; or
- (b) the applicant is a corporation and the past conduct of an officer, director or shareholder affords reasonable grounds for belief that the applicant will not comply with this Act and the regulations concerning the operating of projectors or exhibiting films.

**21. Section 62 of the said Act is repealed and the following substituted therefor:**

**62.** A statement as to,

Certificate  
by Director

- (a) the licensing or non-licensing of any person;
- (b) the classification of any film;
- (c) the approval or non-approval of any film; or



- (d) the approval or non-approval of any advertising,

purporting to be certified by the Director is, without proof of the office or signature of the Director, receivable in evidence as *prima facie* proof of the facts stated therein for all purposes in any action, proceeding or prosecution.

**22. Paragraphs 9, 15, 16, 17, 23, 24, 25, 28 and 30 of subsection 63 (1) of the said Act are repealed and the following substituted therefor:**

9. prohibiting and regulating the use, distribution or exhibition of film or any type or class thereof;
- . . . . .
15. prescribing building plans, documents and other information to be submitted to the Director with an application for a licence;
16. requiring signs to be displayed in respect of the exhibition of film classified by the Board and prescribing types of signs and the manner in which the signs shall be displayed;
17. prescribing the manner in which advertising matter in connection with any film classified by the Board or the exhibition or distribution thereof shall indicate that the film has been so classified;
- 17a. prescribing the manner that approval and classification of films shall be indicated;
- . . . . .
- 19a. prescribing terms and conditions to which theatre licences and film exchange licences or any classes thereof are subject;
- . . . . .
23. prescribing the fees to be paid for the classification or approval of films by the Board;
24. prescribing the manner of application and the material to be submitted to the Board for an approval under section 35;
- 24a. prescribing the fees to be paid for a review under section 35;

25. prescribing the fees to be paid with the submission of advertising matter under section 40;

. . . . .

28. providing for the issue, expiry and renewal of licences under section 53 and prescribing fees therefor;

. . . . .

30. exempting any theatre, film exchange, projector, film or person or any class or type thereof from any provision of this Act or the regulations;

31. prescribing criteria on which the Board may exercise its powers under sections 3, 35 and 40 including prescribing the film or advertising content or subject-matter that the Board may refuse to approve;

32. prescribing procedures concerning matters before the Board.

**23.—**(1) Subsection 222 (8) of the *Municipal Act*, being chapter 302 of the Revised Statutes of Ontario, 1980, is amended by striking out “licensed under the *Theatres Act* or” in the third line.

(2) Clause 222 (9) (e) of the said Act is repealed and the following substituted therefor:

- (e) “services” includes activities, facilities, performances, exhibitions, viewings and encounters but does not include the exhibition of film approved under the *Theatres Act*.

R.S.O. 1980,  
c. 498

**24.** This Act comes into force on a day to be named by proclamation of the Lieutenant Governor.

Commence-  
ment

**25.** The short title of this Act is the *Theatres Amendment Act, 1984*.

Short title

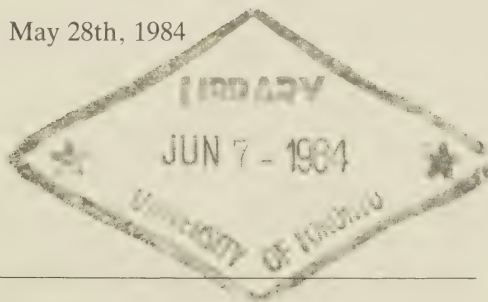


# Bill 83

## An Act to recognize June the 1st as Injured Workers' Day

Mr. Lupusella

*1st Reading*      May 28th, 1984  
*2nd Reading*  
*3rd Reading*  
*Royal Assent*



# EXPLANATORY NOTE

Self-explanatory.



**Bill 83**

**1984**

**An Act to recognize  
June the 1st as Injured Workers' Day**

Whereas it is deemed important to recognize and honour the suffering of the hundreds of thousands of men and women in Ontario who have been and continue to be injured and disabled by workplace accidents;

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

- 1.** The 1st day of June in each year shall be deemed to be Injured Workers' Day. Injured  
Workers'  
Day
- 2.** This Act comes into force on the day it receives Royal Assent. Commence-  
ment
- 3.** The short title of this Act is the *Injured Workers' Day Act, 1984*. Short title



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Government  
Publication

**Bill 84**

**Government Bill**

4TH SESSION, 32ND LEGISLATURE, ONTARIO

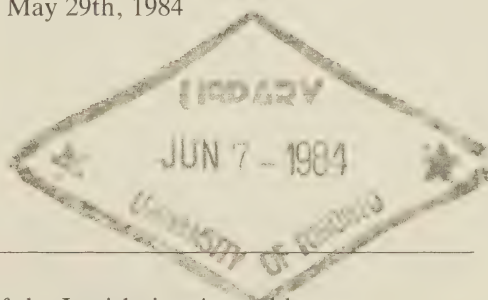
33 ELIZABETH II, 1984

# Bill 84

## An Act to amend the Executive Council Act

The Hon. T. L. Wells  
*Minister of Intergovernmental Affairs*

*1st Reading*      May 29th, 1984  
*2nd Reading*  
*3rd Reading*  
*Royal Assent*



Printed under authority of the Legislative Assembly  
by the Queen's Printer for Ontario

## EXPLANATORY NOTE

### **SECTION 1.** Annual salaries are increased as follows:

1. Premier and President of the Council, from \$34,813 to \$36,341.
2. Minister with portfolio, from \$24,432 to \$25,504.
3. Minister without portfolio, from \$12,268 to \$12,806.
4. Parliamentary Assistant, from \$7,549 to \$7,880.

**Bill 84****1984****An Act to amend the Executive Council Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** Subsections 3 (1), (2), (3) and (4) of the *Executive Council Act*, being chapter 147 of the Revised Statutes of Ontario, 1980, as re-enacted by the Statutes of Ontario, 1983, chapter 49, section 2, are repealed and the following substituted therefor:

(1) The annual salary of every minister with portfolio is \$25,504. Salaries

(2) The Premier and President of the Council shall receive, in addition, \$10,837 per annum. Additional salary for Premier

(3) The annual salary of every minister without portfolio is \$12,806. Salary of minister without portfolio

(4) The annual salary of every Parliamentary Assistant is \$7,880. Salary of Parliamentary Assistant

**2.** This Act shall be deemed to have come into force on the 1st day of April, 1984. Commencement

**3.** The short title of this Act is the *Executive Council Amendment Act, 1984*. Short title





# Bill 84

(Chapter 35  
*Statutes of Ontario, 1984*)

## An Act to amend the Executive Council Act

The Hon. T. L. Wells  
*Minister of Intergovernmental Affairs*

<i>1st Reading</i>	May 29th, 1984
<i>2nd Reading</i>	June 22nd, 1984
<i>3rd Reading</i>	June 27th, 1984
<i>Royal Assent</i>	June 27th, 1984



**Bill 84**

**1984**

**An Act to amend the Executive Council Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1. Subsections 3 (1), (2), (3) and (4) of the *Executive Council Act*, being chapter 147 of the Revised Statutes of Ontario, 1980, as re-enacted by the Statutes of Ontario, 1983, chapter 49, section 2, are repealed and the following substituted therefor:**

(1) The annual salary of every minister with portfolio is \$25,504. Salaries

(2) The Premier and President of the Council shall receive, in addition, \$10,837 per annum. Additional salary for Premier

(3) The annual salary of every minister without portfolio is \$12,806. Salary of minister without portfolio

(4) The annual salary of every Parliamentary Assistant is \$7,880. Salary of Parliamentary Assistant

**2. This Act shall be deemed to have come into force on the 1st day of April, 1984.** Commence-ment

**3. The short title of this Act is the *Executive Council Amendment Act, 1984*.** Short title





# Bill 85

## An Act to amend the Legislative Assembly Act

The Hon. T. L. Wells

*Minister of Intergovernmental Affairs*

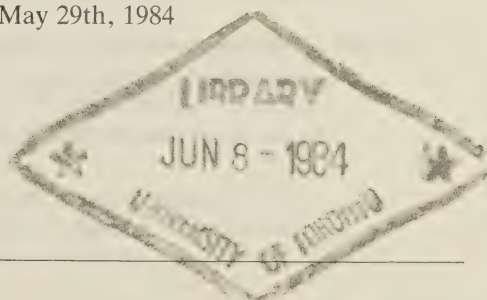
*1st Reading*

May 29th, 1984

*2nd Reading*

*3rd Reading*

*Royal Assent*



## EXPLANATORY NOTES

**SECTION 1.** The annual indemnity of members of the Assembly is increased from \$33,345 to \$34,808.

The annual allowance for expenses of members of the Assembly is increased from \$11,130 to \$11,686.

**SECTION 2.** Leaders' allowances for expenses are increased:

1. For the Premier, from \$6,300 to \$6,576.
2. For the Leader of the Opposition, from \$4,200 to \$4,384.
3. For the Leader of the Third Party, from \$2,100 to \$2,192.

**SECTION 3.** Additional indemnities are increased:

1. For the Speaker, from \$18,035 to \$18,826.
2. For the Leader of the Opposition, from \$24,432 to \$25,504.
3. For the Leader of the Third Party, from \$12,268 to \$12,806.

**SECTION 4.** Additional indemnities are increased:

1. For the Chairman of the Committees of the Whole House, from \$7,549 to \$7,880.
2. For the Deputy Chairman of the Committees of the Whole House, from \$5,243 to \$5,473.
3. For chairmen of standing committees, from \$4,089 to \$4,268.

**SECTION 5.** Additional indemnities to Whips are increased:

1. For the Chief Government Whip, from \$9,332 to \$9,741.
2. For the Deputy Government Whip, from \$6,396 to \$6,676.
3. For the Government Whips, from \$4,613 to \$4,815.
4. For the Chief Opposition Whip, from \$6,396 to \$6,676.
5. For the Opposition Whips, from \$4,613 to \$4,815.
6. For the Chief Party Whip of the Third Party, from \$5,243 to \$5,473.
7. For the Party Whip of the Third Party, from \$4,194 to \$4,378.

**SECTION 6.** Additional indemnities are increased:

1. For the Opposition House Leader, from \$9,332 to \$9,741.
2. For the House Leader of the Third Party, from \$7,025 to \$7,333.

**Bill 85**

**1984**

**An Act to amend the Legislative Assembly Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** Subsections 60 (1) and (2) of the *Legislative Assembly Act*, being chapter 235 of the Revised Statutes of Ontario, 1980, as re-enacted by the Statutes of Ontario, 1983, chapter 50, section 1, are repealed and the following substituted therefor:

(1) An indemnity at the rate of \$34,808 per annum shall be paid to every member of the Assembly. Members' indemnities

(2) An allowance for expenses at the rate of \$11,686 shall be paid to every member of the Assembly. Members' allowances,

**2.** Section 61 of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 50, section 2, is repealed and the following substituted therefor:

**61.** In addition to his indemnity and allowance for expenses as a member, there shall be paid a Leader's allowance for expenses, Leaders' allowances

(a) to the Premier, at the rate of \$6,576 per annum;

(b) to the Leader of the Opposition, at the rate of \$4,384 per annum; and

(c) to the leader of a party, except the Premier and the Leader of the Opposition, that has a recognized membership of twelve or more persons in the Assembly, at the rate of \$2,192 per annum.

**3.** Subsection 62 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 50, section 3, is repealed and the following substituted therefor:

Indemnity  
of Speaker,  
Leader of  
Opposition  
and leader  
of a minority  
party

(1) In addition to his indemnity as a member, there shall be paid,

- (a) to the Speaker an indemnity at the rate of \$18,826 per annum;
- (b) to the Leader of the Opposition an indemnity at the rate of \$25,504 per annum; and
- (c) to the leader of a party, except the Premier and the Leader of the Opposition, that has a recognized membership of twelve or more persons in the Assembly, an indemnity at the rate of \$12,806.

**4. Subsection 64 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 50, section 4, is repealed and the following substituted therefor:**

Chairman  
and Deputy  
Chairman of  
Whole House  
and  
chairmen  
of standing  
committees,  
indemnity

(1) In addition to his indemnity as a member, an indemnity shall be paid,

- (a) to the person who is Deputy Speaker and Chairman of the Committees of the Whole House at the rate of \$7,880 per annum;
- (b) to the Deputy Chairman of the Committees of the Whole House at the rate of \$5,473 per annum; and
- (c) to the chairman of each standing committee at the rate of \$4,268 per annum.

**5. Subsection 65 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 50, section 5, is repealed and the following substituted therefor:**

Whips,  
indemnities

(1) In addition to his indemnity as a member, an indemnity shall be paid,

- (a) to the Chief Government Whip, at the rate of \$9,741 per annum;
- (b) to the Deputy Government Whip, at the rate of \$6,676 per annum;
- (c) to each of not more than three Government Whips, at the rate of \$4,815 per annum;
- (d) to the Chief Opposition Whip, at the rate of \$6,676 per annum;

- (e) to each of not more than two Opposition Whips, at the rate of \$4,815 per annum; and
- (f) in the case of each party that has a recognized membership of twelve or more persons in the Assembly, other than the party from which the Government is chosen and the party recognized as the Official Opposition,
  - (i) to the Chief Party Whip of the party, at the rate of \$5,473 per annum, and
  - (ii) to the Party Whip of the party, at the rate of \$4,378 per annum.

**6.** Section 69 of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 50, section 8, is repealed and the following substituted therefor:

**69.** In addition to his indemnity as a member, an indemnity shall be paid, House  
Leaders'  
indemnities

- (a) to the Opposition House Leader, at the rate of \$9,741 per annum;
- (b) to the House Leader of a party, other than the party from which the Government is chosen and the party recognized as the Official Opposition, that has a recognized membership of twelve or more persons in the Assembly, at the rate of \$7,333 per annum.

**7.** This Act shall be deemed to have come into force on the 1st day of April, 1984. Commence-  
ment

**8.** The short title of this Act is the *Legislative Assembly Amendment Act, 1984*. Short title







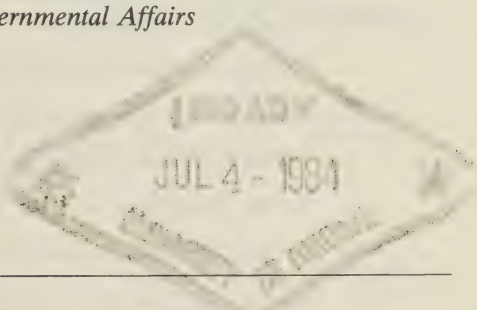


# Bill 85

## An Act to amend the Legislative Assembly Act

The Hon. T. L. Wells

*Minister of Intergovernmental Affairs*



*1st Reading*      May 29th, 1984

*2nd Reading*      June 22nd, 1984

*3rd Reading*

*Royal Assent*

*(Reprinted as amended by the Committee of the Whole House)*

## EXPLANATORY NOTES

**SECTION 1.** The annual indemnity of members of the Assembly is increased from \$33,345 to \$34,808.

The annual allowance for expenses of members of the Assembly is increased from \$11,130 to \$11,686.

**SECTION 2.** Leaders' allowances for expenses are increased:

1. For the Premier, from \$6,300 to \$6,576.
2. For the Leader of the Opposition, from \$4,200 to \$4,384.
3. For the Leader of the Third Party, from \$2,100 to \$2,192.

**SECTION 3.** Additional indemnities are increased:

1. For the Speaker, from \$18,035 to \$18,826.
2. For the Leader of the Opposition, from \$24,432 to \$25,504.
3. For the Leader of the Third Party, from \$12,268 to \$12,806.

**SECTION 4.** Additional indemnities are increased:

1. For the Chairman of the Committees of the Whole House, from \$7,549 to \$7,880.
2. For the Deputy Chairman of the Committees of the Whole House, from \$5,243 to \$5,473.
3. For chairmen of standing committees, from \$4,089 to \$4,268.

**SECTION 5.** Additional indemnities to Whips are increased:

1. For the Chief Government Whip, from \$9,332 to \$9,741.
2. For the Deputy Government Whip, from \$6,396 to \$6,676.
3. For the Government Whips, from \$4,613 to \$4,815.
4. For the Chief Opposition Whip, from \$6,396 to \$6,676.
5. For the Opposition Whips, from \$4,613 to \$4,815.
6. For the Chief Party Whip of the Third Party, from \$5,243 to \$5,473.
7. For the Party Whip of the Third Party, from \$4,194 to \$4,378.

**SECTION 6.** Allowances for expenses are increased:

1. For each member of a committee, from \$60 to \$63.
2. For the chairman of a committee, from \$70 to \$73.

**SECTION 7.** Additional indemnities are increased:

1. For the Opposition House Leader, from \$9,332 to \$9,741.
2. For the House Leader of the Third Party, from \$7,025 to \$7,333.



**Bill 85****1984****An Act to amend the Legislative Assembly Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** Subsections 60 (1) and (2) of the *Legislative Assembly Act*, being chapter 235 of the Revised Statutes of Ontario, 1980, as re-enacted by the Statutes of Ontario, 1983, chapter 50, section 1, are repealed and the following substituted therefor:

(1) An indemnity at the rate of \$34,808 per annum shall be paid to every member of the Assembly. Members' indemnities

(2) An allowance for expenses at the rate of \$11,686 shall be paid to every member of the Assembly. Members' allowances,

**2.** Section 61 of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 50, section 2, is repealed and the following substituted therefor:

**61.** In addition to his indemnity and allowance for expenses as a member, there shall be paid a Leader's allowance for expenses, Leaders' allowances

- (a) to the Premier, at the rate of \$6,576 per annum;
- (b) to the Leader of the Opposition, at the rate of \$4,384 per annum; and
- (c) to the leader of a party, except the Premier and the Leader of the Opposition, that has a recognized membership of twelve or more persons in the Assembly, at the rate of \$2,192 per annum.

**3.** Subsection 62 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 50, section 3, is repealed and the following substituted therefor:

Indemnity  
of Speaker,  
Leader of  
Opposition  
and leader  
of a minority  
party

(1) In addition to his indemnity as a member, there shall be paid,

- (a) to the Speaker an indemnity at the rate of \$18,826 per annum;
- (b) to the Leader of the Opposition an indemnity at the rate of \$25,504 per annum; and
- (c) to the leader of a party, except the Premier and the Leader of the Opposition, that has a recognized membership of twelve or more persons in the Assembly, an indemnity at the rate of \$12,806.

**4. Subsection 64 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 50, section 4, is repealed and the following substituted therefor:**

Chairman  
and Deputy  
Chairman of  
Whole House  
and  
chairmen  
of standing  
committees,  
indemnity

(1) In addition to his indemnity as a member, an indemnity shall be paid,

- (a) to the person who is Deputy Speaker and Chairman of the Committees of the Whole House at the rate of \$7,880 per annum;
- (b) to the Deputy Chairman of the Committees of the Whole House at the rate of \$5,473 per annum; and
- (c) to the chairman of each standing committee at the rate of \$4,268 per annum.

**5. Subsection 65 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 50, section 5, is repealed and the following substituted therefor:**

Whips,  
indemnities

(1) In addition to his indemnity as a member, an indemnity shall be paid,

- (a) to the Chief Government Whip, at the rate of \$9,741 per annum;
- (b) to the Deputy Government Whip, at the rate of \$6,676 per annum;
- (c) to each of not more than three Government Whips, at the rate of \$4,815 per annum;
- (d) to the Chief Opposition Whip, at the rate of \$6,676 per annum;

- (e) to each of not more than two Opposition Whips, at the rate of \$4,815 per annum; and
- (f) in the case of each party that has a recognized membership of twelve or more persons in the Assembly, other than the party from which the Government is chosen and the party recognized as the Official Opposition,
  - (i) to the Chief Party Whip of the party, at the rate of \$5,473 per annum, and
  - (ii) to the Party Whip of the party, at the rate of \$4,378 per annum.



**6.** Subsection 67 (1) of the said Act, as amended by the Statutes of Ontario, 1981, chapter 29, section 6 and 1983, chapter 50, section 7, is further amended by striking out the first, second, third and fourth lines in the amendment of 1981 and inserting in lieu thereof the following:

(1) There shall be paid to each member of a committee of the Assembly other than the chairman thereof an allowance for expenses of \$63 and to the chairman thereof an allowance for expenses of \$73, and,

. . . . .



**7.** Section 69 of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 50, section 8, is repealed and the following substituted therefor:

**69.** In addition to his indemnity as a member, an indemnity shall be paid,

House  
Leaders'  
indemnities

- (a) to the Opposition House Leader, at the rate of \$9,741 per annum;
- (b) to the House Leader of a party, other than the party from which the Government is chosen and the party recognized as the Official Opposition, that has a recognized membership of twelve or more persons in the Assembly, at the rate of \$7,333 per annum.

**8.** This Act shall be deemed to have come into force on the 1st day of April, 1984.

Commence-  
ment

**9.** The short title of this Act is the *Legislative Assembly Amendment Act, 1984*.

Short title









# Bill 85

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4TH SESSION, 32ND LEGISLATURE, ONTARIO

33 ELIZABETH II, 1984

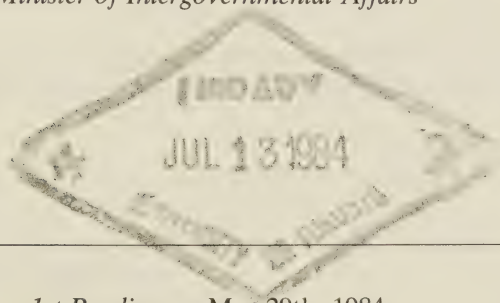
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## Bill 85

*(Chapter 36  
Statutes of Ontario, 1984)*

### An Act to amend the Legislative Assembly Act

The Hon. T. L. Wells  
*Minister of Intergovernmental Affairs*



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<i>1st Reading</i>	May 29th, 1984
<i>2nd Reading</i>	June 22nd, 1984
<i>3rd Reading</i>	June 27th, 1984
<i>Royal Assent</i>	June 27th, 1984

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**Bill 85****1984****An Act to amend the Legislative Assembly Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** Subsections 60 (1) and (2) of the *Legislative Assembly Act*, being chapter 235 of the Revised Statutes of Ontario, 1980, as re-enacted by the Statutes of Ontario, 1983, chapter 50, section 1, are repealed and the following substituted therefor:

(1) An indemnity at the rate of \$34,808 per annum shall be paid to every member of the Assembly. Members' indemnities

(2) An allowance for expenses at the rate of \$11,686 shall be paid to every member of the Assembly. Members' allowances,

**2.** Section 61 of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 50, section 2, is repealed and the following substituted therefor:

**61.** In addition to his indemnity and allowance for expenses as a member, there shall be paid a Leader's allowance for expenses, Leaders' allowances

- (a) to the Premier, at the rate of \$6,576 per annum;
- (b) to the Leader of the Opposition, at the rate of \$4,384 per annum; and
- (c) to the leader of a party, except the Premier and the Leader of the Opposition, that has a recognized membership of twelve or more persons in the Assembly, at the rate of \$2,192 per annum.

**3.** Subsection 62 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 50, section 3, is repealed and the following substituted therefor:

Indemnity  
of Speaker,  
Leader of  
Opposition  
and leader  
of a minority  
party

(1) In addition to his indemnity as a member, there shall be paid,

- (a) to the Speaker an indemnity at the rate of \$18,826 per annum;
- (b) to the Leader of the Opposition an indemnity at the rate of \$25,504 per annum; and
- (c) to the leader of a party, except the Premier and the Leader of the Opposition, that has a recognized membership of twelve or more persons in the Assembly, an indemnity at the rate of \$12,806.

**4. Subsection 64 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 50, section 4, is repealed and the following substituted therefor:**

Chairman  
and Deputy  
Chairman of  
Whole House  
and  
chairmen  
of standing  
committees,  
indemnity

(1) In addition to his indemnity as a member, an indemnity shall be paid,

- (a) to the person who is Deputy Speaker and Chairman of the Committees of the Whole House at the rate of \$7,880 per annum;
- (b) to the Deputy Chairman of the Committees of the Whole House at the rate of \$5,473 per annum; and
- (c) to the chairman of each standing committee at the rate of \$4,268 per annum.

**5. Subsection 65 (1) of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 50, section 5, is repealed and the following substituted therefor:**

Whips,  
indemnities

(1) In addition to his indemnity as a member, an indemnity shall be paid,

- (a) to the Chief Government Whip, at the rate of \$9,741 per annum;
- (b) to the Deputy Government Whip, at the rate of \$6,676 per annum;
- (c) to each of not more than three Government Whips, at the rate of \$4,815 per annum;
- (d) to the Chief Opposition Whip, at the rate of \$6,676 per annum;



- (e) to each of not more than two Opposition Whips, at the rate of \$4,815 per annum; and
- (f) in the case of each party that has a recognized membership of twelve or more persons in the Assembly, other than the party from which the Government is chosen and the party recognized as the Official Opposition,
  - (i) to the Chief Party Whip of the party, at the rate of \$5,473 per annum, and
  - (ii) to the Party Whip of the party, at the rate of \$4,378 per annum.

**6.** Subsection 67 (1) of the said Act, as amended by the Statutes of Ontario, 1981, chapter 29, section 6 and 1983, chapter 50, section 7, is further amended by striking out the first, second, third and fourth lines in the amendment of 1981 and inserting in lieu thereof the following:

(1) There shall be paid to each member of a committee of the Assembly other than the chairman thereof an allowance for expenses of \$63 and to the chairman thereof an allowance for expenses of \$73, and,

. . . . .

**7.** Section 69 of the said Act, as re-enacted by the Statutes of Ontario, 1983, chapter 50, section 8, is repealed and the following substituted therefor:

**69.** In addition to his indemnity as a member, an indemnity shall be paid,

House  
Leaders'  
indemnities

- (a) to the Opposition House Leader, at the rate of \$9,741 per annum;
- (b) to the House Leader of a party, other than the party from which the Government is chosen and the party recognized as the Official Opposition, that has a recognized membership of twelve or more persons in the Assembly, at the rate of \$7,333 per annum.

**8.** This Act shall be deemed to have come into force on the 1st day of April, 1984.

Commence-  
ment

**9.** The short title of this Act is the *Legislative Assembly Amendment Act, 1984*.

Short title





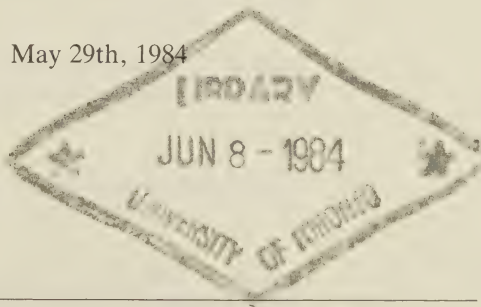


# Bill 86

## An Act to declare the Rights of Children in Ontario

Mr. McClellan

*1st Reading*      May 29th, 1984  
*2nd Reading*  
*3rd Reading*  
*Royal Assent*





## EXPLANATORY NOTE

The purpose of the Bill is to declare the rights of children in Ontario and to provide a means for enforcing those rights. The Bill sets out a series of rights belonging to children who are resident in Ontario and states that every parent and the Government of Ontario has a duty to protect these rights. In certain circumstances, an application can be made to a judge for a determination whether a duty to a child has been fulfilled and the nature of that duty. The Bill provides further guarantees for children in any proceedings concerning matters affecting the guardianship, custody or status of children.

**Bill 86****1984**

**An Act to declare  
the Rights of Children in Ontario**

Whereas the Legislature of Ontario desires to nurture and safeguard the Province's most precious resource, our children, and whereas it is considered to be in the best interests of children in Ontario to enact a Declaration of the Rights of Children, together with the means of enforcing those rights;

Preamble

Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1. In this Act,**

Definitions

- (a) "court" means a provincial court (family division) or the Unified Family Court;
- (b) "judge" means a provincial judge presiding in a provincial court (family division) or in the Unified Family Court;
- (c) "Minister" means the Attorney General of Ontario;
- (d) "parent" includes,
  - (i) a guardian,
  - (ii) a person who has demonstrated a settled intention to treat a child as a child of the person's family, and
  - (iii) a person who is not recognized in law to be a parent of a child but,
    - (A) has acknowledged a parental relationship to the child and has voluntarily provided for the child's care and support, or

(B) by an order of a court of competent jurisdiction or a written agreement, is under a legal duty to provide for the child or has been granted custody of or access to the child,

but does not include the Crown, a society or a foster parent of a child.

Declaration  
of rights

**2.** It is hereby recognized and declared that every child resident in the Province of Ontario is entitled to the following basic rights,

- (a) the right to food, clothing and housing in order to ensure good health and personal development;
- (b) the right to an environment free from physical abuse, exploitation and degrading treatment;
- (c) the right to health care necessary to promote physical and mental health and to remedy illness;
- (d) the right to reside with parents and siblings except where it is in the best interest of the child for the child to reside elsewhere;
- (e) the right to parental and adult support, guidance and continuity in the child's life;
- (f) the right to an education which will ensure every child the opportunity to reach and exercise his or her full potential;
- (g) the right to play and recreation;
- (h) the right to have his or her opinions heard and to be included to the greatest extent possible when any decisions are being made affecting his or her life;
- (i) the right to independent adult counselling and legal assistance in relation to all decisions affecting guardianship, custody, or a determination of status;
- (j) the right to a competent interpreter where language or a disability is a barrier in relation to all decisions affecting guardianship, custody, or a determination of status;
- (k) the right to an explanation of all decisions affecting guardianship, custody, or a determination of status;

- (l) the right to be informed of the rights of children and to have them applied and enforced.

**3.—**(1) Every parent has a duty to provide for and protect the rights of his or her child unless that parent,

Duty of  
parent  
to child

- (a) is unable or unwilling to do so and can demonstrate that the child's rights are being provided for and protected by some other person, institution or agency; or
- (b) is under a legal duty arising from an order of a court of competent jurisdiction or a written agreement limiting the access or other rights of the parent in respect of the child.

(2) The Government of Ontario has a duty to support and assist every parent in providing for and protecting the rights of his or her child and for this purpose the Government of Ontario shall,

Duty of  
Government  
of Ontario  
to parent

- (a) provide such services as are necessary to promote and maintain the rights of children; and
- (b) where the Government of Ontario provides a service to one or more parents, extend that service to any other parent in Ontario who requests the service.

(3) The Government of Ontario has a duty to provide for and protect the rights of a child where,

Duty of  
Government  
of Ontario  
to child

- (a) neither parent of the child is fulfilling his or her duty to the child;
- (b) each parent of the child voluntarily relinquishes his or her rights and duties in respect of the child to the Government of Ontario; or
- (c) the child becomes a ward of the Crown.

**4.** A parent may refuse to participate in or accept services provided by the Government of Ontario for a child under section 3 unless a court determines that the child is in need of protection under the *Child Welfare Act*.

Rights of  
parent to  
refuse  
services  
R.S.O. 1980,  
c. 66

**5.—**(1) Upon the application of a child, a judge may make an order in the nature of a declaration determining,

Declaration

(a) whether a parent has fulfilled his or her duty to provide for and protect the rights of a child under this Act; and

(b) the nature of the parent's duty in the particular circumstances of the case.

Where parent  
makes  
application

(2) Upon the application of a parent on behalf of his or her child, a judge may make an order in the nature of a declaration determining,

(a) whether the Government of Ontario has fulfilled its duty to support and assist the parent in providing for and protecting the rights of his or her child; and

(b) the nature of the duty of the Government of Ontario in the particular circumstances of the case.

Idem

(3) Upon the application of a child who is a ward of the Crown, or who is in the care of a children's aid society or foster parent or who, in the opinion of the judge, is in need of care, the judge may make an order in the nature of a declaration determining,

(a) whether the Government of Ontario has a duty to provide for and protect the rights of the child; and

(b) the nature of the duty of the Government of Ontario in the particular circumstances of the case.

Child as  
applicant

**6.—**(1) A child has capacity to make an application under this Act without the intervention of a next friend or a guardian *ad litem*.

Rules of  
court

(2) An application under this Act may be made in the manner prescribed by the rules of court.

Evidence

**7.** Any oral testimony, document or thing that, where admitted as evidence, enables or assists a judge in determining the rights and needs of a child is relevant to the subject-matter of proceedings under this Act, but the judge shall not admit any testimony, document or thing that attributes fault or blame to any person and does not concern directly the rights and needs of the child.

Interpretation

**8.—**(1) In this section, "court" means a provincial court (family division), the Unified Family Court, a county or district court or the Supreme Court.



(2) A child may have legal representation at any stage in proceedings before a court in Ontario in any matter affecting the guardianship, custody or status of the child.

Legal representation for child

(3) Where in a proceeding referred to in subsection (2) a child does not have legal representation, the court shall, as soon as practicable in the proceedings, determine whether legal representation is desirable to protect the interests of the child and if at that time or any later stage in the proceedings the court determines that legal representation is desirable that court shall direct that legal representation be provided for the child.

Court may direct legal representation for child

**9.**—(1) The rights enumerated in clauses 2 (h), (i), (j) and (k) shall be deemed to constitute standards of natural justice in proceedings concerning the guardianship, custody or status of a child.

Standards of natural justice

(2) Any decision arising from a proceeding referred to in subsection (1) is subject to review in proceedings for an order in the nature of *certiorari* or by way of an action for a declaration or an injunction as if the standards of natural justice established by clauses 2 (h), (i), (j) and (k) were standards of natural justice at common law.

Idem

**10.**—(1) The Minister shall cause to be collected, maintained and published from time to time a digest of judicial declarations made under section 5.

Digest of judicial declarations

(2) A copy of the digest of judicial declarations shall be provided by the Minister to the clerk of each provincial court (family division) and Unified Family Court and the clerk shall make the digest available to any person for examination during normal business hours and any person may make extracts therefrom.

Idem

**11.** Where a provision of this Act conflicts with a provision of any other Act, this Act applies.

Conflict

**12.** This Act comes into force on the day it receives Royal Assent.

Commencement

**13.** The short title of this Act is the *Children's Rights Act, 1984*.

Short title



# Bill 87

## **An Act to protect Farming Operations against Nuisance Claims**

Mr. Riddell

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*1st Reading*      May 29th, 1984

*2nd Reading*

*3rd Reading*

*Royal Assent*

## EXPLANATORY NOTE

The Bill is intended to encourage the preservation of farmland by protecting farmers who carry on normal and non-negligent farming operations from nuisance claims by neighbouring landowners.

Bill 87

1984

## An Act to protect Farming Operations against Nuisance Claims

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** In this Act,

Interpretation

(a) “agricultural land” means land that,

(i) under a by-law passed under section 34 of the *Planning Act, 1983* or under an order made under section 46 of that Act, is zoned for agricultural use, or

1983, c. 1

(ii) is assessed under the *Assessment Act* or is actually used as farm or agricultural land or as an orchard;

R.S.O. 1980,  
c. 31

(b) “farming operation” means an activity conducted on agricultural land in connection with the commercial production of a farm product;

(c) “farm product” means an animal or plant product;

(d) “Minister” means the Minister of Agriculture and Food.

**2.** A farming operation that,

(a) complies with the guidelines established by the Minister under section 3; or

Farming  
operation  
deemed not  
to be a  
nuisance:  
criteria

(b) was established before the use of neighbouring land changed and was not a nuisance before that change took place,

shall be deemed not to be a public or private nuisance if it is conducted in a manner that,



- (c) is not negligent;
- (d) conforms to generally accepted practice for similar farming operations;
- (e) does not endanger human health or safety; and
- (f) does not contribute to flooding or water pollution.

Minister's  
guidelines

**3.** The Minister may establish guidelines for the conduct of farming operations so as to minimize conflict between farming operations and residential or recreational uses of land.

Commence-  
ment

**4.** This Act comes into force on the day it receives Royal Assent.

Short title

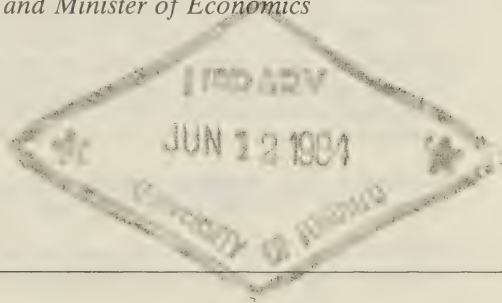
**5.** The short title of this Act is the *Right to Farm Act, 1984*.

# Bill 88

## An Act to amend the Financial Administration Act

The Hon. L. Grossman

*Treasurer of Ontario and Minister of Economics*



*1st Reading*      May 31st, 1984

*2nd Reading*

*3rd Reading*

*Royal Assent*

## EXPLANATORY NOTES

**SECTION 1.** The re-enactment of clause 3 (1) (b) adds a reference to securities “guaranteed” by the United States of America. The amendment to clause 3 (1) (d) adds a similar reference with respect to security instruments guaranteed by any chartered bank. At present, the clauses refer only to such securities or instruments that are issued by the United States of America or, in the case of those of a chartered bank, are issued or endorsed by the bank. The amendments will extend the securities in which the Treasurer may invest on behalf of the Consolidated Revenue Fund to those that are guaranteed by the United States of America or by a chartered bank.

**SECTION 2.** The amendment to subsection 5 (1) provides that where, for reasons of financial hardship, economic considerations or other circumstances, it is impractical to collect a debt due to the Crown, the debt may be deleted from the accounts.

**SECTION 3.** The new section 9a added by this amendment provides for the charging of interest or penalties on money owed to the Crown and not paid when due. It authorizes the Lieutenant Governor in Council to fix the rate of interest or amount of penalty from time to time payable, and allows the Treasurer to issue general policy directions on when interest or penalties should be charged. The section also provides that its provisions do not apply where a specific statute, regulation or contract has expressly provided for the matter of interest or penalty for default in payment. The amendment implements recommendations of the Legislature’s Standing Committee on Public Accounts.

**SECTION 4.** The subsections re-enacted by subsection (1) provide for payment out of the Consolidated Revenue Fund by written authorization as well as by cheque. The increasing efficiency of electronic funds transfers, now widely in use in the public service, is better accomplished under written authorization than by cheque. Subsection 10 (1) of the Act now refers only to cheques.

The amendment in subsection (2) adds a new subsection (4) to provide that the fees, commissions and expenses incurred in the operation of the banking business of the Consolidated Revenue Fund are payable out of that Fund.

**SECTION 5.** The amendment makes it clear that a payment ordered by a court to be made by the Crown has the same status for the purpose of section 12 as a payment ordered to be made by the Lieutenant Governor.

**SECTION 6.** Since interim payments are no longer made in advance of recoveries from a federal appropriation, the reference to federal appropriations is deleted. The words added allow interim payments where goods are purchased for resale to the public as, for example, in government-operated bookstores, gift shops, etc.

**SECTION 7.** The amendment adds premiums payable on securities to the charges payable out of the Consolidated Revenue Fund.

**SECTION 8.** The paragraph is re-enacted to include references consequential on the amendment to subsection 10 (1) of the Act made by section 4 of the Bill.

**SECTION 9.** The amendment is consequential on the amendment made by section 4 of the Bill, and adds a reference to “written authorizations”.

**SECTION 10.** The amendments proposed in this section make it clear that the Lieutenant Governor in Council may authorize any officer of the Ministry of the Attorney General to act on behalf of the province in the execution of contracts and documents relating to loans.

**SECTION 11.** The section of the *Public Officers Act* that is repealed no longer serves any useful purpose. Other administrative procedures have, for some years, replaced the furnishing of security by a public officer, and the annual statement required by the section that is being repealed is no longer meaningful.

Bill 88

1984

**An Act to amend  
the Financial Administration Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.**—(1) Clause 3 (1) (b) of the *Financial Administration Act*, being chapter 161 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

- (b) securities issued or guaranteed by the United States of America.

(2) Clause 3 (1) (d) of the said Act is amended by inserting after “issued” in the second line “guaranteed”.

**2.** Subsection 5 (1) of the said Act is repealed and the following substituted therefor:

(1) Where a person has an obligation or debt due to the Crown or the Crown has a claim against a person, the Treasurer may, subject to any other Act affecting such obligation, debt or claim,

Settlement of  
or determi-  
nation of  
uncollecta-  
bility of  
debts, etc.

- (a) negotiate and accept a settlement in payment and satisfaction of such obligation, debt or claim;
- (b) determine that any such obligation, debt or claim is uncollectable; or
- (c) determine that financial hardship, economic considerations or other circumstances do not warrant the collection or enforcement of any such obligation, debt or claim.

**3.** The said Act is amended by adding thereto the following section:



Unpaid debts  
to Crown

**9a.**—(1) Where money that is owing by any person to the Crown or a ministry is not paid at the time for payment provided for by law or by the agreement, undertaking or arrangement under which the obligation to pay arose, the Crown or ministry to whom such payment is owed may require the payment of interest or penalty on any such unpaid amount in accordance with this section, and such interest or penalty so required to be paid is a debt due to the Crown recoverable by action or by any other remedy or procedure available by law to the Crown for the collection of debts owed to the Crown.

Exception

(2) This section does not apply to a default in payment under a statute or regulation that expressly provides for interest or penalty on such default, and does not apply to any agreement, undertaking or arrangement that expressly provides for interest or penalty payable on overdue payments, but the fact that a statute makes a default in the payment of moneys owing under it to the Crown or a ministry an offence does not prevent the imposition of interest or a penalty under this section in respect of moneys owing under that statute.

Statement  
of policy

(3) The Treasurer may issue general instructions establishing a policy to govern when, at what rate, in what amount, and in what circumstances the payment of interest or penalty may be required under subsection (1).

Amount of  
interest  
or penalty

(4) The Lieutenant Governor in Council may by order fix a maximum rate of interest or penalty for the purpose of this section either by specifying the rate or, in lieu of a specified rate, by specifying a formula or basis for determining from time to time the rate of interest or penalty payable under this section, and may establish the method and conditions for calculating and charging any such interest or penalty, and may provide for different penalties or rates of interest to be applicable to different classes of payment or to different amounts of payment in default.

Reduction

(5) The Treasurer may, in his discretion, authorize the forgiveness or noncollection of interest or penalty payable under this section, and may authorize the charging of a lower rate of interest or amount of penalty than the maximum under this section where he considers that financial hardship, economic considerations or other circumstances warrant such authorization.

Application

(6) This section applies to the payment of interest or penalty on any amount owing to the Crown or a ministry on or after the 1st day of April, 1984 whether the obligation to pay such amount arose before or after that date.



**4.—(1) Subsections 10 (1) and (2) of the said Act are repealed and the following substituted therefor:**

(1) Every payment out of the Consolidated Revenue Fund shall be made by cheque or written authorization which cheque or authorization shall be signed by the Treasurer and by the Deputy Treasurer or such other officer of the Ministry of Treasury and Economics who is for the time being authorized by the Treasurer to sign cheques or authorizations.

Form of  
payments  
out of  
Fund

(2) The Treasurer may authorize the use on cheques or written authorizations of facsimile signatures to be affixed thereto by rubber stamp or by printing, lithographing, engraving or by other mechanical means.

Signature

**(2) The said section 10 is amended by adding thereto the following subsection:**

(4) With the approval of the Treasurer, any fees, commissions or expenses incurred in respect of deposits to, transfers within, or payments from the Consolidated Revenue Fund, or in respect of services furnished to the Crown in the operation of any bank account established under section 2 are a charge upon and payable out of the Consolidated Revenue Fund.

Fees, etc.,  
charge on  
Con. Rev.  
Fund

**5. Section 12 of the said Act is amended by inserting after “by” in the third line “the Crown or”.**

**6. Section 14 of the said Act is amended by striking out “or from a federal appropriation” in the fifth line and inserting in lieu thereof “or from the sale to the public of goods purchased with such interim payment”.**

**7. Section 18 of the said Act is repealed and the following substituted therefor:**

**18.** All money raised by way of loan and the interest thereon and the principal amount of and interest and premiums on all securities issued are a charge on and are payable out of the Consolidated Revenue Fund.

Money  
raised,  
a charge on  
Con. Rev.  
Fund

**8. Paragraph 2 of section 19 of the said Act, as amended by the Statutes of Ontario, 1981, chapter 66, section 1, Schedule, is repealed and the following substituted therefor:**

2. By temporary loan or loans, and in any such case, unless the Lieutenant Governor in Council otherwise directs, the sums authorized to be raised by way of temporary loan, or any part thereof, may be raised by way of cheques or written authorizations

creating overdrafts and having such signatures affixed thereto as provided by section 10 as would make such cheques or authorizations, if not creating overdrafts, binding on Ontario, and all moneys paid in honouring any such cheque or in acting upon any such authorization by any bank upon which such cheque is drawn or to which such authorization extends shall conclusively be deemed to have been raised by the Lieutenant Governor in Council in pursuance of the authorizing Act.

**9.** Subsection 22 (2) of the said Act is amended by inserting after “cheques” in the first line “written authorizations”.

**10.—**(1) Subsection 23 (1) of the said Act is repealed and the following substituted therefor:

Contracts  
and  
agreements  
for the  
raising of  
loans

(1) The Lieutenant Governor in Council may authorize the Treasurer or any officer of the Ministry of Treasury and Economics or of the Ministry of the Attorney General to enter into, or execute, on behalf of Ontario, such contracts, agreements and documents relating to the raising of loans or the issue and sale of securities as the Lieutenant Governor in Council approves.

(2) Subsection 23 (3) of the said Act is amended by inserting after “Economics” in the fifth line “or of the Ministry of the Attorney General”.

**11.** Section 10 of the *Public Officers Act*, being chapter 415 of the Revised Statutes of Ontario, 1980, is repealed.

Commence-  
ment

**12.** This Act comes into force on the day it receives Royal Assent.

Short title

**13.** The short title of this Act is the *Financial Administration Amendment Act, 1984*.





# Bill 88

## An Act to amend the Financial Administration Act

The Hon. L. Grossman

*Treasurer of Ontario and Minister of Economics*

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*1st Reading*      May 31st, 1984

*2nd Reading*      June 12th, 1984

*3rd Reading*

*Royal Assent*

*(Reprinted as amended by the Committee of the Whole House)*



## EXPLANATORY NOTES

**SECTION 1.** The re-enactment of clause 3 (1) (b) adds a reference to securities “guaranteed” by the United States of America. The amendment to clause 3 (1) (d) adds a similar reference with respect to security instruments guaranteed by any chartered bank. At present, the clauses refer only to such securities or instruments that are issued by the United States of America or, in the case of those of a chartered bank, are issued or endorsed by the bank. The amendments will extend the securities in which the Treasurer may invest on behalf of the Consolidated Revenue Fund to those that are guaranteed by the United States of America or by a chartered bank.

**SECTION 2.** The amendment to subsection 5 (1) provides that where, for reasons of financial hardship, economic considerations or other circumstances, it is impractical to collect a debt due to the Crown, the debt may be deleted from the accounts.

**SECTION 3.** The new section 9a added by this amendment provides for the charging of interest or penalties on money owed to the Crown and not paid when due. It authorizes the Lieutenant Governor in Council to fix the rate of interest or amount of penalty from time to time payable, and allows the Treasurer to issue general policy directions on when interest or penalties should be charged. The section also provides that its provisions do not apply where a specific statute, regulation or contract has expressly provided for the matter of interest or penalty for default in payment. The amendment implements recommendations of the Legislature’s Standing Committee on Public Accounts.

**SECTION 4.** The subsections re-enacted by subsection (1) provide for payment out of the Consolidated Revenue Fund by written authorization as well as by cheque. The increasing efficiency of electronic funds transfers, now widely in use in the public service, is better accomplished under written authorization than by cheque. Subsection 10 (1) of the Act now refers only to cheques.

The amendment in subsection (2) adds a new subsection (4) to provide that the fees, commissions and expenses incurred in the operation of the banking business of the Consolidated Revenue Fund are payable out of that Fund.

**SECTION 5.** The amendment makes it clear that a payment ordered by a court to be made by the Crown has the same status for the purpose of section 12 as a payment ordered to be made by the Lieutenant Governor.

**SECTION 6.** Since interim payments are no longer made in advance of recoveries from a federal appropriation, the reference to federal appropriations is deleted. The words added allow interim payments where goods are purchased for resale to the public as, for example, in government-operated bookstores, gift shops, etc.

**SECTION 7.** The amendment adds premiums payable on securities to the charges payable out of the Consolidated Revenue Fund.

**SECTION 8.** The paragraph is re-enacted to include references consequential on the amendment to subsection 10 (1) of the Act made by section 4 of the Bill.

**SECTION 9.** The amendment is consequential on the amendment made by section 4 of the Bill, and adds a reference to “written authorizations”.

**SECTION 10.** The amendments proposed in this section make it clear that the Lieutenant Governor in Council may authorize any officer of the Ministry of the Attorney General to act on behalf of the province in the execution of contracts and documents relating to loans.

**Bill 88**

**1984**

**An Act to amend  
the Financial Administration Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.—**(1) Clause 3 (1) (b) of the *Financial Administration Act*, being chapter 161 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:

- (b) securities issued or guaranteed by the United States of America.

(2) Clause 3 (1) (d) of the said Act is amended by inserting after “issued” in the second line “guaranteed”.

**2.** Subsection 5 (1) of the said Act is repealed and the following substituted therefor:

(1) Where a person has an obligation or debt due to the Crown or the Crown has a claim against a person, the Treasurer may, subject to any other Act affecting such obligation, debt or claim,

Settlement of  
or determination of  
uncollectability of  
debts, etc.

- (a) negotiate and accept a settlement in payment and satisfaction of such obligation, debt or claim;
- (b) determine that any such obligation, debt or claim is uncollectable; or
- (c) determine that financial hardship, economic considerations or other circumstances do not warrant the collection or enforcement of any such obligation, debt or claim.

**3.** The said Act is amended by adding thereto the following section:

Unpaid debts  
to Crown

**9a.**—(1) Where money that is owing by any person to the Crown or a ministry is not paid at the time for payment provided for by law or by the agreement, undertaking or arrangement under which the obligation to pay arose, the Crown or ministry to whom such payment is owed may require the payment of interest or penalty on any such unpaid amount in accordance with this section, and such interest or penalty so required to be paid is a debt due to the Crown recoverable by action or by any other remedy or procedure available by law to the Crown for the collection of debts owed to the Crown.

Exception

(2) This section does not apply to a default in payment under a statute or regulation that expressly provides for interest or penalty on such default, and does not apply to any agreement, undertaking or arrangement that expressly provides for interest or penalty payable on overdue payments, but the fact that a statute makes a default in the payment of moneys owing under it to the Crown or a ministry an offence does not prevent the imposition of interest or a penalty under this section in respect of moneys owing under that statute.

Statement  
of policy

(3) The Treasurer may issue general instructions establishing a policy to govern when, at what rate, in what amount, and in what circumstances the payment of interest or penalty may be required under subsection (1).

Amount of  
interest  
or penalty

(4) The Lieutenant Governor in Council may by order fix a maximum rate of interest or penalty for the purpose of this section either by specifying the rate or, in lieu of a specified rate, by specifying a formula or basis for determining from time to time the rate of interest or penalty payable under this section, and may establish the method and conditions for calculating and charging any such interest or penalty, and may provide for different penalties or rates of interest to be applicable to different classes of payment or to different amounts of payment in default.

Reduction

(5) The Treasurer may, in his discretion, authorize the forgiveness or noncollection of interest or penalty payable under this section, and may authorize the charging of a lower rate of interest or amount of penalty than the maximum under this section where he considers that financial hardship, economic considerations or other circumstances warrant such authorization.

Application

(6) This section applies to the payment of interest or penalty on any amount owing to the Crown or a ministry on or after the 1st day of April, 1984 whether the obligation to pay such amount arose before or after that date.

**4.—(1) Subsections 10 (1) and (2) of the said Act are repealed and the following substituted therefor:**

(1) Every payment out of the Consolidated Revenue Fund shall be made by cheque or written authorization which cheque or authorization shall be signed by the Treasurer and by the Deputy Treasurer or such other officer of the Ministry of Treasury and Economics who is for the time being authorized by the Treasurer to sign cheques or authorizations.

Form of  
payments  
out of  
Fund

(2) The Treasurer may authorize the use on cheques or written authorizations of facsimile signatures to be affixed thereto by rubber stamp or by printing, lithographing, engraving or by other mechanical means.

Signature

**(2) The said section 10 is amended by adding thereto the following subsection:**

(4) With the approval of the Treasurer, any fees, commissions or expenses incurred in respect of deposits to, transfers within, or payments from the Consolidated Revenue Fund, or in respect of services furnished to the Crown in the operation of any bank account established under section 2 are a charge upon and payable out of the Consolidated Revenue Fund.

Fees, etc.,  
charge on  
Con. Rev.  
Fund

**5. Section 12 of the said Act is amended by inserting after “by” in the third line “the Crown or”.**

**6. Section 14 of the said Act is amended by striking out “or from a federal appropriation” in the fifth line and inserting in lieu thereof “or from the sale to the public of goods purchased with such interim payment”.**

**7. Section 18 of the said Act is repealed and the following substituted therefor:**

**18. All money raised by way of loan and the interest thereon and the principal amount of and interest and premiums on all securities issued are a charge on and are payable out of the Consolidated Revenue Fund.**

Money  
raised,  
a charge on  
Con. Rev.  
Fund

**8. Paragraph 2 of section 19 of the said Act, as amended by the Statutes of Ontario, 1981, chapter 66, section 1, Schedule, is repealed and the following substituted therefor:**

2. By temporary loan or loans, and in any such case, unless the Lieutenant Governor in Council otherwise directs, the sums authorized to be raised by way of temporary loan, or any part thereof, may be raised by way of cheques or written authorizations



creating overdrafts and having such signatures affixed thereto as provided by section 10 as would make such cheques or authorizations, if not creating overdrafts, binding on Ontario, and all moneys paid in honouring any such cheque or in acting upon any such authorization by any bank upon which such cheque is drawn or to which such authorization extends shall conclusively be deemed to have been raised by the Lieutenant Governor in Council in pursuance of the authorizing Act.

**9.** Subsection 22 (2) of the said Act is amended by inserting after “cheques” in the first line “written authorizations”.

**10.—(1)** Subsection 23 (1) of the said Act is repealed and the following substituted therefor:

Contracts  
and  
agreements  
for the  
raising of  
loans

(1) The Lieutenant Governor in Council may authorize the Treasurer or any officer of the Ministry of Treasury and Economics or of the Ministry of the Attorney General to enter into, or execute, on behalf of Ontario, such contracts, agreements and documents relating to the raising of loans or the issue and sale of securities as the Lieutenant Governor in Council approves.

(2) Subsection 23 (3) of the said Act is amended by inserting after “Economics” in the fifth line “or of the Ministry of the Attorney General”.

Commence-  
ment

► **11.** This Act comes into force on the day it receives Royal Assent.

Short title

**12.** The short title of this Act is the *Financial Administration Amendment Act, 1984*.





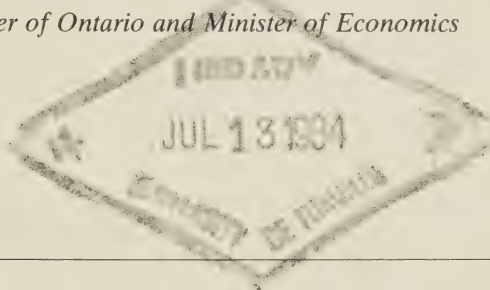


# Bill 88

(Chapter 37  
*Statutes of Ontario, 1984*)

## **An Act to amend the Financial Administration Act**

The Hon. L. Grossman  
*Treasurer of Ontario and Minister of Economics*



<i>1st Reading</i>	May 31st, 1984
<i>2nd Reading</i>	June 12th, 1984
<i>3rd Reading</i>	June 22nd, 1984
<i>Royal Assent</i>	June 27th, 1984



**Bill 88**

**1984**

**An Act to amend  
the Financial Administration Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.—(1) Clause 3 (1) (b) of the *Financial Administration Act*, being chapter 161 of the Revised Statutes of Ontario, 1980, is repealed and the following substituted therefor:**

- (b) securities issued or guaranteed by the United States of America.

**(2) Clause 3 (1) (d) of the said Act is amended by inserting after “issued” in the second line “guaranteed”.**

**2. Subsection 5 (1) of the said Act is repealed and the following substituted therefor:**

(1) Where a person has an obligation or debt due to the Crown or the Crown has a claim against a person, the Treasurer may, subject to any other Act affecting such obligation, debt or claim,

Settlement of  
or determi-  
nation of  
uncollecta-  
bility of  
debts, etc.

- (a) negotiate and accept a settlement in payment and satisfaction of such obligation, debt or claim;
- (b) determine that any such obligation, debt or claim is uncollectable; or
- (c) determine that financial hardship, economic considerations or other circumstances do not warrant the collection or enforcement of any such obligation, debt or claim.

**3. The said Act is amended by adding thereto the following section:**



Unpaid debts  
to Crown

**9a.**—(1) Where money that is owing by any person to the Crown or a ministry is not paid at the time for payment provided for by law or by the agreement, undertaking or arrangement under which the obligation to pay arose, the Crown or ministry to whom such payment is owed may require the payment of interest or penalty on any such unpaid amount in accordance with this section, and such interest or penalty so required to be paid is a debt due to the Crown recoverable by action or by any other remedy or procedure available by law to the Crown for the collection of debts owed to the Crown.

Exception

(2) This section does not apply to a default in payment under a statute or regulation that expressly provides for interest or penalty on such default, and does not apply to any agreement, undertaking or arrangement that expressly provides for interest or penalty payable on overdue payments, but the fact that a statute makes a default in the payment of moneys owing under it to the Crown or a ministry an offence does not prevent the imposition of interest or a penalty under this section in respect of moneys owing under that statute.

Statement  
of policy

(3) The Treasurer may issue general instructions establishing a policy to govern when, at what rate, in what amount, and in what circumstances the payment of interest or penalty may be required under subsection (1).

Amount of  
interest  
or penalty

(4) The Lieutenant Governor in Council may by order fix a maximum rate of interest or penalty for the purpose of this section either by specifying the rate or, in lieu of a specified rate, by specifying a formula or basis for determining from time to time the rate of interest or penalty payable under this section, and may establish the method and conditions for calculating and charging any such interest or penalty, and may provide for different penalties or rates of interest to be applicable to different classes of payment or to different amounts of payment in default.

Reduction

(5) The Treasurer may, in his discretion, authorize the forgiveness or noncollection of interest or penalty payable under this section, and may authorize the charging of a lower rate of interest or amount of penalty than the maximum under this section where he considers that financial hardship, economic considerations or other circumstances warrant such authorization.

Application

(6) This section applies to the payment of interest or penalty on any amount owing to the Crown or a ministry on or after the 1st day of April, 1984 whether the obligation to pay such amount arose before or after that date.

**4.—(1) Subsections 10 (1) and (2) of the said Act are repealed and the following substituted therefor:**

(1) Every payment out of the Consolidated Revenue Fund shall be made by cheque or written authorization which cheque or authorization shall be signed by the Treasurer and by the Deputy Treasurer or such other officer of the Ministry of Treasury and Economics who is for the time being authorized by the Treasurer to sign cheques or authorizations.

Form of  
payments  
out of  
Fund

(2) The Treasurer may authorize the use on cheques or written authorizations of facsimile signatures to be affixed thereto by rubber stamp or by printing, lithographing, engraving or by other mechanical means.

Signature

**(2) The said section 10 is amended by adding thereto the following subsection:**

(4) With the approval of the Treasurer, any fees, commissions or expenses incurred in respect of deposits to, transfers within, or payments from the Consolidated Revenue Fund, or in respect of services furnished to the Crown in the operation of any bank account established under section 2 are a charge upon and payable out of the Consolidated Revenue Fund.

Fees, etc.,  
charge on  
Con. Rev.  
Fund

**5. Section 12 of the said Act is amended by inserting after “by” in the third line “the Crown or”.**

**6. Section 14 of the said Act is amended by striking out “or from a federal appropriation” in the fifth line and inserting in lieu thereof “or from the sale to the public of goods purchased with such interim payment”.**

**7. Section 18 of the said Act is repealed and the following substituted therefor:**

**18.** All money raised by way of loan and the interest thereon and the principal amount of and interest and premiums on all securities issued are a charge on and are payable out of the Consolidated Revenue Fund.

Money  
raised,  
a charge on  
Con. Rev.  
Fund

**8. Paragraph 2 of section 19 of the said Act, as amended by the Statutes of Ontario, 1981, chapter 66, section 1, Schedule, is repealed and the following substituted therefor:**

2. By temporary loan or loans, and in any such case, unless the Lieutenant Governor in Council otherwise directs, the sums authorized to be raised by way of temporary loan, or any part thereof, may be raised by way of cheques or written authorizations

creating overdrafts and having such signatures affixed thereto as provided by section 10 as would make such cheques or authorizations, if not creating overdrafts, binding on Ontario, and all moneys paid in honouring any such cheque or in acting upon any such authorization by any bank upon which such cheque is drawn or to which such authorization extends shall conclusively be deemed to have been raised by the Lieutenant Governor in Council in pursuance of the authorizing Act.

**9.** Subsection 22 (2) of the said Act is amended by inserting after "cheques" in the first line "written authorizations".

**10.—(1)** Subsection 23 (1) of the said Act is repealed and the following substituted therefor:

Contracts  
and  
agreements  
for the  
raising of  
loans

(1) The Lieutenant Governor in Council may authorize the Treasurer or any officer of the Ministry of Treasury and Economics or of the Ministry of the Attorney General to enter into, or execute, on behalf of Ontario, such contracts, agreements and documents relating to the raising of loans or the issue and sale of securities as the Lieutenant Governor in Council approves.

(2) Subsection 23 (3) of the said Act is amended by inserting after "Economics" in the fifth line "or of the Ministry of the Attorney General".

Commence-  
ment

**11.** This Act comes into force on the day it receives Royal Assent.

Short title

**12.** The short title of this Act is the *Financial Administration Amendment Act, 1984*.



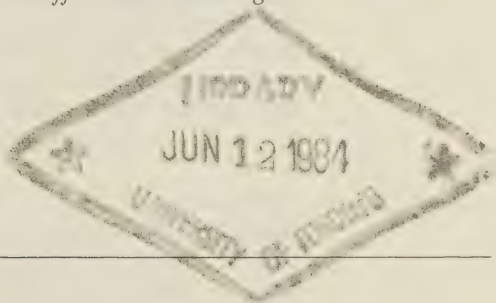




# Bill 89

## An Act to amend the Regional Municipality of Haldimand-Norfolk Act

The Hon. C. Bennett  
*Minister of Municipal Affairs and Housing*



*1st Reading*      May 31st, 1984  
*2nd Reading*  
*3rd Reading*  
*Royal Assent*

## EXPLANATORY NOTES

The Bill establishes new hydro-electric commissions for the municipalities of Delhi, Dunnville, Haldimand, Nanticoke, Norfolk and Simcoe.

A transitional period is provided before the new commissions become fully operational.

The members of each commission will be the mayor of the area municipality and additional members who are qualified municipal electors in the area municipality and who are served by a municipal commission.

The council of each area municipality will determine whether, for terms after the first term, the members of its commission should be elected or appointed.

Except in the Town of Simcoe, customers in each area municipality now supplied with power by Ontario Hydro will continue to be supplied by Ontario Hydro until the council of the area municipality, with the consent of Ontario Hydro, passes a by-law requiring the new commission to commence the distribution and supply of power in all of the area municipality.

In the interim, the councils of the area municipalities are required to review the supply of power at least once in every five years.

Provision is made for the transfer of employees in certain circumstances and for the protection of their salaries and benefits.

Bill 89

1984

**An Act to amend the  
Regional Municipality of Haldimand-Norfolk Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** The *Regional Municipality of Haldimand-Norfolk Act*, being chapter 435 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following Part:

PART III-A

HYDRO-ELECTRIC SERVICES

**50a.** In this Part,

Interpretation

- (a) “accumulated net retail equity” means the portion of equity accumulated through debt retirement appropriations recorded for the Rural Power District relating to Ontario Hydro’s rural retail system plus the portion of the balance recorded for customers in the Stabilization of Rates and Contingencies Account, in the books of Ontario Hydro;
- (b) “municipal commission” means a hydro-electric commission or public utilities commission entrusted with the control and management of works for the retail distribution and supply of power in the Regional Area immediately before the coming into force of this Part and established or deemed to be established under Part III of the *Public Utilities Act*;
- (c) “new commission” means a commission established by section 50b;
- (d) “power” means electrical power and includes electrical energy;

R.S.O. 1980,  
c. 423

- (e) "regulations" means the regulations made under this Part;
- (f) "retail", when used in relation to the distribution and supply of power, refers to the distribution and supply of power at voltages less than 50 kilovolts, but does not refer to works located within a transformer station that transform power from voltages greater than 50 kilovolts to voltages less than 50 kilovolts.

Commissions  
established

**50b.**—(1) On the day this Part comes into force, a hydro-electric commission for each of the Township of Delhi, the Town of Dunnville, the Town of Haldimand, the City of Nanticoke, the Township of Norfolk and the Town of Simcoe is hereby established.

Application  
of  
R.S.O. 1980,  
cc. 423, 384

(2) Each commission established by subsection (1) shall be deemed to be a commission established under Part III of the *Public Utilities Act* and a municipal commission within the meaning of the *Power Corporation Act*.

Names of  
commissions

(3) Each commission established by subsection (1) shall be known by the name set out below that relates to the area municipality in respect of which the commission is established:

1. Delhi Hydro-Electric Commission.
2. Dunnville Hydro-Electric Commission.
3. Haldimand Hydro-Electric Commission.
4. Nanticoke Hydro-Electric Commission.
5. Norfolk Hydro-Electric Commission.
6. Simcoe Hydro-Electric Commission.

Composition

R.S.O. 1980,  
c. 308

(4) Each commission established by subsection (1) shall consist of the mayor of the area municipality in respect of which the commission is established and additional members who are qualified electors under the *Municipal Elections Act* in the area municipality and who are served by the new commission on the date of their election or appointment to the new commission.

When area  
municipality  
may  
determine  
size of  
commission

(5) Except as otherwise provided in this Part, the council of each area municipality shall determine by by-law whether the number of additional members of the new commission in respect of the area municipality shall be two or four.

(6) For the term expiring with the 30th day of November, 1985, the Delhi Hydro-Electric Commission established by subsection (1) shall consist of the mayor of the Township of Delhi and four members of the Delhi Public Utilities Commission as it existed immediately before the coming into force of this Part, who shall be appointed by the council of the Township.

First  
commission,  
Delhi

(7) For the term expiring with the 30th day of November, 1985, the Dunnville Hydro-Electric Commission established by subsection (1) shall consist of the mayor of the Town of Dunnville and four members of the Dunnville Public Utilities Commission as it existed immediately before the coming into force of this Part, who shall be appointed by the council of the Town.

First  
commission,  
Dunnville

(8) For the term expiring with the 30th day of November, 1985, the Haldimand Hydro-Electric Commission established by subsection (1) shall consist of the mayor of the Town of Haldimand and six additional members who shall be appointed by the council of the Town, with two of the additional members drawn from the membership as it existed immediately before the coming into force of this Part, of each municipal commission within the area municipality.

First  
commission,  
Haldimand

(9) For the term expiring with the 30th day of November, 1985, the Nanticoke Hydro-Electric Commission established by subsection (1) shall consist of the mayor of the City of Nanticoke and six additional members who shall be appointed by the council of the City, with two of the additional members drawn from the membership as it existed immediately before the coming into force of this Part, of each municipal commission within the area municipality.

First  
commission,  
Nanticoke

(10) For the term expiring with the 30th day of November, 1985, the Norfolk Hydro-Electric Commission established by subsection (1) shall consist of the mayor of the Township of Norfolk and four members of the Port Rowan Public Utilities Commission as it existed immediately before the coming into force of this Part, who shall be appointed by the council of the Township.

First  
commission,  
Norfolk

(11) For the term expiring with the 30th day of November, 1985, the Simcoe Hydro-Electric Commission established by subsection (1) shall consist of the mayor of the Town of Simcoe, three members of the Simcoe Public Utilities Commission as it existed immediately before the coming into force of this Part, who shall be appointed by the council of the Town and one person who resides outside the part of the Town of Simcoe supplied with power by Simcoe Public Utilities Commis-

First  
commission,  
Simcoe



sion immediately before the coming into force of this Part who shall be appointed by the council of the Town.

Additional  
members  
of first  
commission

(12) Where this section provides that one or more members of a municipal commission are to be additional members for a term specified by this section and the number of such members who meet the qualifications in subsection (4) is less than the required number of additional members, the council of the area municipality in respect of which the commission was established under subsection (1) shall appoint an additional member or additional members so that there will be the required number of additional members of the new commission.

Additional  
members of  
subsequent  
commissions

(13) For terms commencing after the 30th day of November, 1985, the additional members of each new commission shall be elected by a general vote of the electors of the area municipality served by the commission, unless before the 1st day of July, 1985 the council of the area municipality provides by by-law that the additional members shall be elected by a general vote of those electors of the area municipality who reside within the area served by the commission or that the additional members shall be appointed by the council.

Eligibility  
of members  
of council

(14) Members of the council of the area municipality served by a new commission may be members of the new commission, but the members of the council shall not form a majority of the new commission.

Term of  
office

(15) Subject to subsections (6) to (11), a member of a commission established by subsection (1) shall hold office for the same term as the members of council or until his successor is elected or appointed.

Delegates

(16) The council of an area municipality served by a new commission may, by by-law passed with the written consent of the mayor, appoint a delegate from among the members of the council to represent the mayor on the commission.

Salary  
of first  
commissions

(17) The salaries of the members of the new commissions for the term expiring with the 30th day of November, 1985 shall be fixed on or before the 1st day of January, 1985 in an amount that does not exceed the highest salary paid to members of the municipal commissions operating in the Regional Area on the 1st day of January, 1984.

Resignations

(18) A resignation from the council of an area municipality of a member of the council who is a member of a new commission shall be deemed to be a resignation from both the council and the new commission.

**50c.**—(1) Except as herein provided, all the powers, rights, authorities and privileges that are conferred by the *Public Utilities Act* on a municipal corporation with respect to power shall, on and after the 1st day of January, 1985, be exercised on behalf of each area municipality by the new commission established in respect of the area municipality and not by the council of any municipality or any other person.

Powers of commissions

R.S.O. 1980, c. 423

(2) On and after the 1st day of January, 1985, each new commission has the sole right to distribute and supply power within the area municipality in respect of which the new commission is established.

Right to distribute and supply power

(3) The right of a new commission to distribute and supply power is subject to any subsisting contracts for the supply of power made under section 69 of the *Power Corporation Act*.

Exception to right to distribute and supply power

R.S.O. 1980, c. 384

(4) A new commission may contract with Ontario Hydro without electoral assent or other approval or authorization for the transmission and supply to the new commission of power to be distributed and sold in the area municipality served by the new commission.

Contract with Ontario Hydro

(5) A contract under subsection (4) shall be deemed to be an agreement within the meaning of clause 149 (2) (s) of the *Municipal Act*.

Idem

R.S.O. 1980, c. 302

(6) Except where inconsistent with the provisions of this Act, the provisions of the *Power Corporation Act* applicable to a municipal corporation that has entered into a contract with Ontario Hydro for the distribution and supply of power to the municipal corporation apply to the new commissions.

Application of R.S.O. 1980, c. 384

(7) With the consent of a new commission, Ontario Hydro may distribute and supply power directly to customers in the area municipality in respect of which the new commission is established.

Direct customers

**50d.**—(1) The council of each area municipality except the Town of Simcoe, with the consent of Ontario Hydro and without the assent of the municipal electors, by by-law,

Supply of power in all areas of municipalities, except Town of Simcoe

- (a) may direct the new commission established in respect of the area municipality to commence on a day specified by the by-law the distribution and supply of power in all of the area municipality and on the specified day sections 50g, 50h and 50k shall apply with necessary modifications to the assets and

employees of Ontario Hydro in the area municipality; or

- (b) may dissolve the new commission established in respect of the area municipality on a day specified by the by-law and, on the specified day,
  - (i) all assets under the control and management of and all liabilities of the new commission, and all debentures issued in respect of the distribution and supply of power in the area municipality are, without compensation, assets and liabilities of Ontario Hydro, and
  - (ii) Ontario Hydro shall commence to distribute and supply power in all of the area municipality.

Review of  
distribution  
and supply  
of power

(2) Until such time as the power conferred by subsection (1) has been exercised,

- (a) the council of each area municipality except the Town of Simcoe shall review the distribution and supply of power within the area municipality at least once in every five years and shall determine by resolution whether or not it is financially feasible to exercise the power conferred by clause (1) (a); and
- (b) where the council of an area municipality determines as provided in clause (a) that it is financially feasible for the new commission established in respect of the municipality to distribute and supply power in the entire municipality, the council, subject to the approval of Ontario Hydro, shall exercise the power conferred by clause (1) (a).

Where  
Ontario  
Hydro to  
distribute  
and supply  
power

**50e.**—(1) Ontario Hydro shall continue to distribute and supply power in those parts of each area municipality, other than the Town of Simcoe, that Ontario Hydro served immediately before the coming into force of this Part.

Termination  
of duty to  
distribute  
and supply  
power

(2) The duty of Ontario Hydro under subsection (1) to distribute and supply power in an area municipality is terminated,

- (a) on the date specified in a by-law passed with the consent of Ontario Hydro by the council of the area municipality under clause 50d(1) (a); and



- (b) on the 31st day of December, 1984 in the Town of Simcoe.

(3) Except as provided in clauses (2) (b) and (c), sections 50g, 50h and 50k do not apply in respect of the assets and employees of Ontario Hydro in an area municipality until the passing of the by-law mentioned in subsection (2).

Assets and employees

**50f.** On the 1st day of January, 1985, all assets under the control and management of and all liabilities of the municipal commissions in each area municipality are, without compensation, assets under the control and management of and liabilities of the new commission established in respect of the area municipality.

Transfer of assets and liabilities

**50g.**—(1) On or before the date on which a commission is required by subsection (2) or by by-law under section 50d to commence to distribute and supply power, the commission shall purchase on behalf of the area municipality served by the commission, and Ontario Hydro shall sell to the commission, the assets and liabilities of Ontario Hydro that pertain to the distribution and supply of power at retail in the area municipality.

Purchase of retail distribution facilities from Ontario Hydro

(2) On or before the 31st day of March, 1985, the Simcoe Hydro-Electric Commission established by section 50b shall purchase on behalf of The Corporation of the Town of Simcoe, and Ontario Hydro shall sell to the commission, the assets and liabilities of Ontario Hydro that pertain to the distribution and supply of power at retail in the Town of Simcoe.

Idem

(3) The purchases mentioned in subsections (1) and (2) shall include equipment leased by Ontario Hydro to retail customers in the area municipalities for the use of power supplied to the retail customers.

Leased equipment

(4) The purchase price shall be determined in accordance with the regulations and shall be equal to the original cost of the assets less the sum of,

Purchase price

- (a) the accumulated net retail equity of the customers supplied with power through the assets; and
- (b) the accumulated depreciation associated with the assets.

**50h.**—(1) If the purchase price for the assets and liabilities of Ontario Hydro that pertain to the distribution and supply of power at retail in an area municipality is not determined within one year after the date on which the new

Where price to be determined by arbitration

commission serving the area municipality is required by by-law under this Part to commence to distribute and supply power in the area municipality or, in respect of the Town of Simcoe, before the 31st day of December, 1985, the appropriate new commission or Ontario Hydro at any time thereafter may request that the purchase price be determined by a single arbitrator agreed on by the commission and Ontario Hydro.

Application  
of  
R.S.O. 1980,  
c. 25

(2) The *Arbitrations Act* applies where a request is made under subsection (1).

Vesting  
of real  
property

**50i.**—(1) All real property transferred by this Part to the control and management of a new commission or otherwise acquired by or for the new commission shall be held by the new commission in trust for the area municipality served by the new commission.

Disposition  
of real  
property

(2) Where a new commission is of the opinion, and so declares by resolution, that any real property under its control and management is not required for its purposes, unless otherwise agreed upon by the new commission and the area municipality served by the new commission, the real property may be disposed of as follows:

1. In the event that the area municipality served by the new commission wishes in good faith to use the real property for a municipal purpose, it shall compensate the new commission for the real property at its actual cost, less accrued depreciation as shown on the books of the new commission or the assessed value of the real property, whichever is the greater, and when the municipality in good faith no longer wishes to use the real property for a municipal purpose, the area municipality may sell, lease or otherwise dispose of the real property without the assent of Ontario Hydro and may retain the proceeds of the sale, lease or disposition as municipal funds.
2. In the event that the municipality served by the new commission does not wish to use the real property in accordance with paragraph 1, the new commission shall, as soon as practicable, sell, lease or otherwise dispose of the real property at fair market value on behalf of the municipality and the net proceeds derived from the sale, lease or other disposition of the real property or the compensation paid therefor under this subsection shall be received by the new commission and shall be applied in accordance with the *Public Utilities Act*.



**50j.** Except as otherwise provided in this Part, sections 87 to 110 apply with necessary modifications to any borrowing for the purposes of a new commission. Borrowing

**50k.**—(1) In this section, “transfer date”, in relation to an employee of a municipal commission or Ontario Hydro, means the date on which a commission established by or under this Part assumes liability for payment of the wages or salary of the employee. Interpretation

(2) On or before the 31st day of December, 1984, each municipal commission shall designate those current employees of the municipal commission employed by the municipal commission in the distribution and supply of power for at least twelve months, and each new commission shall offer employment to the employees designated in respect of the area municipality served by the new commission. Transfer of employees

(3) On or before the 31st day of March, 1984, Ontario Hydro shall designate those of its current employees who were employed in the distribution and supply of power in the Town of Simcoe for at least the preceding twelve months, and the Simcoe Hydro-Electric Commission established by section 50b shall offer employment to the employees so designated. Ontario Hydro

(4) A person who accepts employment under this section is entitled to receive, for a period of one year commencing on the transfer date, a wage or salary not less than the wage or salary the person was receiving on the day nine months before the transfer date. Wages or salaries

(5) Each new commission shall be deemed to have elected to participate in the Ontario Municipal Employees Retirement System on the day this Part comes into force, and a person who accepts employment under this section shall be deemed to continue or to become a member of the System, as the case requires, on the person's transfer date, and the *Ontario Municipal Employees Retirement System Act* applies to the person as a member of the System. Participation in O.M.E.R.S.

(6) When a person who accepts employment under this section with a new commission is entitled immediately before the person's transfer date to the benefit of a supplementary agreement between the Ontario Municipal Employees Retirement Board and the municipal commission that designated the person under subsection (2), the new commission shall assume, in respect of the person, all rights and obligations under the supplementary agreement as if the new commission had been a party to the agreement in the place of the municipal commission. R.S.O. 1980, c. 348  
Supplementary agreements

Transfer of  
pension  
credits  
from Ontario  
Hydro Plan

(7) Where a person who accepts employment under this section is a contributor to The Pension and Insurance Fund of Ontario Hydro immediately before the person's transfer date, the present value of the pension earned by the person in The Pension and Insurance Fund of Ontario Hydro at the transfer date or the contributions of the person in the Fund with interest accumulated and credited to the person in the Fund, whichever is the greater, shall be transferred to the Ontario Municipal Employees Retirement Fund and the person shall be given credit in the Ontario Municipal Employees Retirement System for a period of service equal to the period of service for which he was given credit in The Ontario Hydro Pension and Insurance Plan.

Pension  
guarantee

(8) Notwithstanding subsection (5), a person who accepts employment under this section with a new commission and with,

- (a) was employed by Ontario Hydro immediately before the person's transfer date; and
- (b) continues in the employment of a municipal hydro-electric commission until the person or the beneficiary of the person becomes entitled to a pension benefit,

is entitled to at least the pension benefit the person would have been entitled to under The Ontario Hydro Pension and Insurance Plan if the person's years of continuous service with the commission had been additional years of continuous service with Ontario Hydro and if there had been no change in the Plan after the 31st day of December, 1984, calculated on the basis of the wage or salary paid to the person by Ontario Hydro and the commission, and the cost, if any, of the pension benefit over the cost of the pension benefit to which the person is entitled under subsection (5) shall be apportioned and paid by the body and in the manner provided by the regulations.

Group life  
insurance

(9) A person who accepts employment under this section is entitled as a term of the person's employment to continue as a member of the group life insurance plan in which the person was a member with the person's former employer until the effective date of a common group life insurance plan covering all eligible employees of the person's new employer.

Idem

(10) On or before the 31st day of December, 1985, each new commission shall provide a common group life insurance plan covering all of the eligible employees of the new commission, and the plan shall provide to any person accepting

employment under this section, by option or otherwise, insurance coverage not inferior to the insurance coverage to which the person was entitled immediately before the person's transfer date.

(11) A person who accepts employment under this section shall continue to enjoy the rights and benefits of sick leave entitlements or sick leave insurance provided by the former employer of the person immediately before the person's transfer date until the new employer establishes a sick leave entitlement plan or sick leave insurance plan, and thereupon the person shall receive allowance or credit for any accrued sick leave rights or benefits. Sick leave

(12) Each new commission shall continue the provision of life insurance to pensioners formerly employed by a municipal commission in the distribution and supply of power in the area municipality served by the new commission. Life insurance provided to pensioners

(13) Nothing in this section prevents an employer from terminating the employment of an employee for cause. Termination for cause

(14) Where, in the opinion of the Minister, a person who is designated or who accepts employment under this section experiences any difficulty or hardship with regard to life insurance benefits, pension rights, pension benefits or sick leave rights or benefits, the Minister by order may do anything necessary to remedy or alleviate such difficulty or hardship. Special circumstances

**50l.** For the purposes of section 131, the 1st day of January, 1985 is the date determined by the Minister in respect of all areas within the Regional Area and on that date the municipal commissions supplying only electrical power and energy in all areas within the Regional Area immediately before the coming into force of this Part are dissolved and any by-laws establishing them passed under sections 37 and 39 of the *Public Utilities Act* shall be deemed to be repealed and the assent of the municipal electors is not required. Dissolution of existing commissions

**50m.** The Lieutenant Governor in Council may make regulations, Regulations

(a) for the purpose of subsection 50g (4) in respect of,

- (i) the method of determining the original cost of the assets or of any asset or of any part of any asset,
- (ii) the allocation of the original cost of the assets or of any asset or of any part of any asset,

- (iii) the method of determining the amount of any component of the accumulated net retail equity,
  - (iv) the allocation of the accumulated net retail equity or any component of the accumulated net retail equity,
  - (v) the method of calculating accumulated depreciation of any component of accumulated depreciation,
  - (vi) the allocation of accumulated depreciation or any component of accumulated depreciation,
  - (vii) the method of payment of the price of the assets;
- (b) for the purposes of subsection 50k (8) in respect of the apportionment and payment of the excess cost of any benefit referred to in that subsection.

Commence-  
ment

**2. This Act comes into force on the day it receives Royal Assent.**

Short title

**3. The short title of this Act is the *Regional Municipality of Haldimand-Norfolk Amendment Act, 1984*.**







4TH SESSION, 32ND LEGISLATURE, ONTARIO

33 ELIZABETH II, 1984

# Bill 89

## An Act to amend the Regional Municipality of Haldimand-Norfolk Act

The Hon. C. Bennett

*Minister of Municipal Affairs and Housing*



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<i>1st Reading</i>	May 31st, 1984
<i>2nd Reading</i>	November 1st, 1984
<i>3rd Reading</i>	
<i>Royal Assent</i>	

*(Reprinted as amended by the Committee of the Whole House)*

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## EXPLANATORY NOTES

The Bill establishes new hydro-electric commissions for the municipalities of Delhi, Dunnville, Haldimand, Nanticoke, Norfolk and Simcoe.

A transitional period is provided before the new commissions become fully operational.

The members of each commission will be the mayor of the area municipality and additional members who are qualified municipal electors in the area municipality and who are served by a municipal commission.

The council of each area municipality will determine whether, for terms after the first term, the members of its commission should be elected or appointed.

Except in the Town of Simcoe, customers in each area municipality now supplied with power by Ontario Hydro will continue to be supplied by Ontario Hydro until the council of the area municipality, with the consent of Ontario Hydro, passes a by-law requiring the new commission to commence the distribution and supply of power in all of the area municipality.

In the interim, the councils of the area municipalities are required to review the supply of power at least once in every five years.

Provision is made for the transfer of employees in certain circumstances and for the protection of their salaries and benefits.

Bill 89

1984

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Regional Municipality of Haldimand-Norfolk Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** The *Regional Municipality of Haldimand-Norfolk Act*, being chapter 435 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following Part:

PART III-A

HYDRO-ELECTRIC SERVICES

**50a.** In this Part,

Interpretation

- (a) "accumulated net retail equity" means the portion of equity accumulated through debt retirement appropriations recorded for the Rural Power District relating to Ontario Hydro's rural retail system plus the portion of the balance recorded for customers in the Stabilization of Rates and Contingencies Account, in the books of Ontario Hydro;
- (b) "municipal commission" means a hydro-electric commission or public utilities commission entrusted with the control and management of works for the retail distribution and supply of power in the Regional Area immediately before the coming into force of this Part and established or deemed to be established under Part III of the *Public Utilities Act*;
- (c) "new commission" means a commission established by section 50b;
- (d) "power" means electrical power and includes electrical energy;

R.S.O. 1980,  
c. 423

- (e) "regulations" means the regulations made under this Part;
- (f) "retail", when used in relation to the distribution and supply of power, refers to the distribution and supply of power at voltages less than 50 kilovolts, but does not refer to works located within a transformer station that transform power from voltages greater than 50 kilovolts to voltages less than 50 kilovolts.

Commissions  
established

**50b.**—(1) On the day this Part comes into force, a hydro-electric commission for each of the Township of Delhi, the Town of Dunnville, the Town of Haldimand, the City of Nanticoke, the Township of Norfolk and the Town of Simcoe is hereby established.

Application  
of  
R.S.O. 1980,  
cc. 423, 384

(2) Each commission established by subsection (1) shall be deemed to be a commission established under Part III of the *Public Utilities Act* and a municipal commission within the meaning of the *Power Corporation Act*.

Names of  
commissions

(3) Each commission established by subsection (1) shall be known by the name set out below that relates to the area municipality in respect of which the commission is established:

1. Delhi Hydro-Electric Commission.
2. Dunnville Hydro-Electric Commission.
3. Haldimand Hydro-Electric Commission.
4. Nanticoke Hydro-Electric Commission.
5. Norfolk Hydro-Electric Commission.
6. Simcoe Hydro-Electric Commission.

Composition

R.S.O. 1980,  
c. 308

(4) Each commission established by subsection (1) shall consist of the mayor of the area municipality in respect of which the commission is established and additional members who are qualified electors under the *Municipal Elections Act* in the area municipality and who are served by the new commission on the date of their election or appointment to the new commission.

When area  
municipality  
may  
determine  
size of  
commission

(5) Except as otherwise provided in this Part, the council of each area municipality shall determine by by-law whether the number of additional members of the new commission in respect of the area municipality shall be two or four.



(6) For the term expiring with the 30th day of November, 1985, the Delhi Hydro-Electric Commission established by subsection (1) shall consist of the mayor of the Township of Delhi and four members of the Delhi Public Utilities Commission as it existed immediately before the coming into force of this Part, who shall be appointed by the council of the Township.

First  
commission,  
Delhi

(7) For the term expiring with the 30th day of November, 1985, the Dunnville Hydro-Electric Commission established by subsection (1) shall consist of the mayor of the Town of Dunnville and four members of the Dunnville Public Utilities Commission as it existed immediately before the coming into force of this Part, who shall be appointed by the council of the Town.

First  
commission,  
Dunnville

(8) For the term expiring with the 30th day of November, 1985, the Haldimand Hydro-Electric Commission established by subsection (1) shall consist of the mayor of the Town of Haldimand and six additional members who shall be appointed by the council of the Town, with two of the additional members drawn from the membership as it existed immediately before the coming into force of this Part, of each municipal commission within the area municipality.

First  
commission,  
Haldimand

(9) For the term expiring with the 30th day of November, 1985, the Nanticoke Hydro-Electric Commission established by subsection (1) shall consist of the mayor of the City of Nanticoke and six additional members who shall be appointed by the council of the City, with two of the additional members drawn from the membership as it existed immediately before the coming into force of this Part, of each municipal commission within the area municipality.

First  
commission,  
Nanticoke

(10) For the term expiring with the 30th day of November, 1985, the Norfolk Hydro-Electric Commission established by subsection (1) shall consist of the mayor of the Township of Norfolk and four members of the Port Rowan Public Utilities Commission as it existed immediately before the coming into force of this Part, who shall be appointed by the council of the Township.

First  
commission,  
Norfolk

(11) For the term expiring with the 30th day of November, 1985, the Simcoe Hydro-Electric Commission established by subsection (1) shall consist of the mayor of the Town of Simcoe, three members of the Simcoe Public Utilities Commission as it existed immediately before the coming into force of this Part, who shall be appointed by the council of the Town and one person who resides outside the part of the Town of Simcoe supplied with power by Simcoe Public Utilities Commis-

First  
commission,  
Simcoe

sion immediately before the coming into force of this Part who shall be appointed by the council of the Town.

Additional  
members  
of first  
commission

(12) Where this section provides that one or more members of a municipal commission are to be additional members for a term specified by this section and the number of such members who meet the qualifications in subsection (4) is less than the required number of additional members, the council of the area municipality in respect of which the commission was established under subsection (1) shall appoint an additional member or additional members so that there will be the required number of additional members of the new commission.

Additional  
members of  
subsequent  
commissions

(13) For terms commencing after the 30th day of November, 1985, the additional members of each new commission shall be elected by a general vote of the electors of the area municipality served by the commission, unless before the 1st day of July, 1985 the council of the area municipality provides by by-law that the additional members shall be elected by a general vote of those electors of the area municipality who reside within or are owners or tenants of land within the area served by the commission or that the additional members shall be appointed by the council.

Eligibility  
of members  
of council

(14) Members of the council of the area municipality served by a new commission may be members of the new commission, but the members of the council shall not form a majority of the new commission.

Term of  
office

(15) Subject to subsections (6) to (11), a member of a commission established by subsection (1) shall hold office for the same term as the members of council or until his successor is elected or appointed.

Delegates

(16) The council of an area municipality served by a new commission may, by by-law passed with the written consent of the mayor, appoint a delegate from among the members of the council to represent the mayor on the commission.

Salary  
of first  
commissions

(17) The salaries of the members of the new commissions for the term expiring with the 30th day of November, 1985 shall be fixed on or before the 1st day of January, 1985 in an amount that does not exceed the highest salary paid to members of the municipal commissions operating in the Regional Area on the 1st day of January, 1984.

Resignations

(18) A resignation from the council of an area municipality of a member of the council who is a member of a new com-

mission shall be deemed to be a resignation from both the council and the new commission.

**50c.**—(1) Except as herein provided, all the powers, rights, authorities and privileges that are conferred by the *Public Utilities Act* on a municipal corporation with respect to power shall, on and after the 1st day of January, 1985, be exercised on behalf of each area municipality by the new commission established in respect of the area municipality and not by the council of any municipality or any other person.

Powers of commissions

R.S.O. 1980,  
c. 423

(2) On and after the 1st day of January, 1985, each new commission has the sole right to distribute and supply power within the area municipality in respect of which the new commission is established.

Right to distribute and supply power

(3) The right of a new commission to distribute and supply power is subject to any subsisting contracts for the supply of power made under section 69 of the *Power Corporation Act*.

Exception to right to distribute and supply power

R.S.O. 1980,  
c. 384

(4) A new commission may contract with Ontario Hydro without electoral assent or other approval or authorization for the transmission and supply to the new commission of power to be distributed and sold in the area municipality served by the new commission.

Contract with Ontario Hydro

(5) A contract under subsection (4) shall be deemed to be an agreement within the meaning of clause 149 (2) (s) of the *Municipal Act*.

Idem

R.S.O. 1980,  
c. 302

(6) Except where inconsistent with the provisions of this Act, the provisions of the *Power Corporation Act* applicable to a municipal corporation that has entered into a contract with Ontario Hydro for the distribution and supply of power to the municipal corporation apply to the new commissions.

Application of  
R.S.O. 1980,  
c. 384

(7) With the consent of a new commission, Ontario Hydro may distribute and supply power directly to customers in the area municipality in respect of which the new commission is established.

Direct customers

**50d.**—(1) The council of each area municipality except the Town of Simcoe, with the consent of Ontario Hydro and without the assent of the municipal electors, by by-law,

Supply of power in all areas of municipalities, except Town of Simcoe

(a) may direct the new commission established in respect of the area municipality to commence on a day specified by the by-law the distribution and sup-

ply of power in all of the area municipality and on the specified day sections 50g, 50h and 50k shall apply with necessary modifications to the assets and employees of Ontario Hydro in the area municipality; or

- (b) may dissolve the new commission established in respect of the area municipality on a day specified by the by-law and, on the specified day,
  - (i) all assets under the control and management of and all liabilities of the new commission, and all debentures issued in respect of the distribution and supply of power in the area municipality are, without compensation, assets and liabilities of Ontario Hydro, and
  - (ii) Ontario Hydro shall commence to distribute and supply power in all of the area municipality.

Review of  
distribution  
and supply  
of power

(2) Until such time as the power conferred by subsection (1) has been exercised,

- (a) the council of each area municipality except the Town of Simcoe shall review the distribution and supply of power within the area municipality at least once in every five years and shall determine by resolution whether or not it is financially feasible to exercise the power conferred by clause (1) (a); and
- (b) where the council of an area municipality determines as provided in clause (a) that it is financially feasible for the new commission established in respect of the municipality to distribute and supply power in the entire municipality, the council, subject to the approval of Ontario Hydro, shall exercise the power conferred by clause (1) (a).

Where  
Ontario  
Hydro to  
distribute  
and supply  
power

**50e.**—(1) Ontario Hydro shall continue to distribute and supply power in those parts of each area municipality, other than the Town of Simcoe, that Ontario Hydro served immediately before the coming into force of this Part.

Termination  
of duty to  
distribute  
and supply  
power

(2) The duty of Ontario Hydro under subsection (1) to distribute and supply power in an area municipality is terminated,



(a) on the date specified in a by-law passed with the consent of Ontario Hydro by the council of the area municipality under clause 50d(1) (a); and

(b) on the 31st day of December, 1984 in the Town of Simcoe.

(3) Except as provided in clauses (2) (b) and (c), sections 50g, 50h and 50k do not apply in respect of the assets and employees of Ontario Hydro in an area municipality until the passing of the by-law mentioned in subsection (2).

Assets and employees

**50f.** On the 1st day of January, 1985, all assets under the control and management of and all liabilities of the municipal commissions in each area municipality are, without compensation, assets under the control and management of and liabilities of the new commission established in respect of the area municipality.

Transfer of assets and liabilities

**50g.**—(1) On or before the date on which a commission is required by subsection (2) or by by-law under section 50d to commence to distribute and supply power, the commission shall purchase on behalf of the area municipality served by the commission, and Ontario Hydro shall sell to the commission, the assets and liabilities of Ontario Hydro that pertain to the distribution and supply of power at retail in the area municipality.

Purchase of retail distribution facilities from Ontario Hydro

(2) On or before the 31st day of March, 1985, the Simcoe Hydro-Electric Commission established by section 50b shall purchase on behalf of The Corporation of the Town of Simcoe, and Ontario Hydro shall sell to the commission, the assets and liabilities of Ontario Hydro that pertain to the distribution and supply of power at retail in the Town of Simcoe.

Idem

(3) The purchases mentioned in subsections (1) and (2) shall include equipment leased by Ontario Hydro to retail customers in the area municipalities for the use of power supplied to the retail customers.

Leased equipment

(4) The purchase price shall be determined in accordance with the regulations and shall be equal to the original cost of the assets less the sum of,

Purchase price

(a) the accumulated net retail equity of the customers supplied with power through the assets; and

(b) the accumulated depreciation associated with the assets.



Where price  
to be  
determined  
by arbitration

**50h.**—(1) If the purchase price for the assets and liabilities of Ontario Hydro that pertain to the distribution and supply of power at retail in an area municipality is not determined within one year after the date on which the new commission serving the area municipality is required by by-law under this Part to commence to distribute and supply power in the area municipality or, in respect of the Town of Simcoe, before the 31st day of December, 1985, the appropriate new commission or Ontario Hydro at any time thereafter may request that the purchase price be determined by a single arbitrator agreed on by the commission and Ontario Hydro.

Application  
of  
R.S.O. 1980,  
c. 25

(2) The *Arbitrations Act* applies where a request is made under subsection (1).

Vesting  
of real  
property

**50i.**—(1) All real property transferred by this Part to the control and management of a new commission or otherwise acquired by or for the new commission shall be held by the new commission in trust for the area municipality served by the new commission.

Disposition  
of real  
property

(2) Where a new commission is of the opinion, and so declares by resolution, that any real property under its control and management is not required for its purposes, unless otherwise agreed upon by the new commission and the area municipality served by the new commission, the real property may be disposed of as follows:

1. In the event that the area municipality served by the new commission wishes in good faith to use the real property for a municipal purpose, it shall compensate the new commission for the real property at its actual cost, less accrued depreciation as shown on the books of the new commission or the assessed value of the real property, whichever is the greater, and when the municipality in good faith no longer wishes to use the real property for a municipal purpose, the area municipality may sell, lease or otherwise dispose of the real property without the assent of Ontario Hydro and may retain the proceeds of the sale, lease or disposition as municipal funds.
2. In the event that the municipality served by the new commission does not wish to use the real property in accordance with paragraph 1, the new commission shall, as soon as practicable, sell, lease or otherwise dispose of the real property at fair market value on behalf of the municipality and the net proceeds derived from the sale, lease or other disposi-

tion of the real property or the compensation paid therefor under this subsection shall be received by the new commission and shall be applied in accordance with the *Public Utilities Act*.

R.S.O. 1980,  
c. 423

**50j.** Except as otherwise provided in this Part, sections 87 to 110 apply with necessary modifications to any borrowing for the purposes of a new commission.

Borrowing

**50k.**—(1) In this section, “transfer date”, in relation to an employee of a municipal commission or Ontario Hydro, means the date on which a commission established by or under this Part assumes liability for payment of the wages or salary of the employee.

Interpretation

(2) On or before the 31st day of December, 1984, each municipal commission shall designate those current employees of the municipal commission employed by the municipal commission in the distribution and supply of power for at least twelve months, and each new commission shall offer employment to the employees designated in respect of the area municipality served by the new commission.

Transfer of  
employees

(3) On or before the 31st day of March, 1984, Ontario Hydro shall designate those of its current employees who were employed in the distribution and supply of power in the Town of Simcoe for at least the preceding twelve months, and the Simcoe Hydro-Electric Commission established by section 50b shall offer employment to the employees so designated.

Ontario  
Hydro

(4) A person who accepts employment under this section is entitled to receive, for a period of one year commencing on the transfer date, a wage or salary not less than the wage or salary the person was receiving on the day nine months before the transfer date.

Wages or  
salaries

(5) Each new commission shall be deemed to have elected to participate in the Ontario Municipal Employees Retirement System on the day this Part comes into force, and a person who accepts employment under this section shall be deemed to continue or to become a member of the System, as the case requires, on the person's transfer date, and the *Ontario Municipal Employees Retirement System Act* applies to the person as a member of the System.

Partici-  
pation in  
O.M.E.R.S.

R.S.O. 1980,  
c. 348

(6) When a person who accepts employment under this section with a new commission is entitled immediately before the person's transfer date to the benefit of a supplementary agreement between the Ontario Municipal Employees Retirement Board and the municipal commission that designated the per-

Supple-  
mentary  
agreements

son under subsection (2), the new commission shall assume, in respect of the person, all rights and obligations under the supplementary agreement as if the new commission had been a party to the agreement in the place of the municipal commission.

Transfer of  
pension  
credits  
from Ontario  
Hydro Plan

(7) Where a person who accepts employment under this section is a contributor to The Pension and Insurance Fund of Ontario Hydro immediately before the person's transfer date, the present value of the pension earned by the person in The Pension and Insurance Fund of Ontario Hydro at the transfer date or the contributions of the person in the Fund with interest accumulated and credited to the person in the Fund, whichever is the greater, shall be transferred to the Ontario Municipal Employees Retirement Fund and the person shall be given credit in the Ontario Municipal Employees Retirement System for a period of service equal to the period of service for which he was given credit in The Ontario Hydro Pension and Insurance Plan.

Pension  
guarantee

(8) Notwithstanding subsection (5), a person who accepts employment under this section with a new commission and who,

- (a) was employed by Ontario Hydro immediately before the person's transfer date; and
- (b) continues in the employment of a municipal hydro-electric commission until the person or the beneficiary of the person becomes entitled to a pension benefit,

is entitled to at least the pension benefit the person would have been entitled to under The Ontario Hydro Pension and Insurance Plan if the person's years of continuous service with the commission had been additional years of continuous service with Ontario Hydro and if there had been no change in the Plan after the 31st day of December, 1984, calculated on the basis of the wage or salary paid to the person by Ontario Hydro and the commission, and the cost, if any, of the pension benefit over the cost of the pension benefit to which the person is entitled under subsection (5) shall be apportioned and paid by the body and in the manner provided by the regulations.

Group life  
insurance

(9) A person who accepts employment under this section is entitled as a term of the person's employment to continue as a member of the group life insurance plan in which the person was a member with the person's former employer until the



effective date of a common group life insurance plan covering all eligible employees of the person's new employer.

(10) On or before the 31st day of December, 1985, each new commission shall provide a common group life insurance plan covering all of the eligible employees of the new commission, and the plan shall provide to any person accepting employment under this section, by option or otherwise, insurance coverage not inferior to the insurance coverage to which the person was entitled immediately before the person's transfer date. Idem

(11) A person who accepts employment under this section shall continue to enjoy the rights and benefits of sick leave entitlements or sick leave insurance provided by the former employer of the person immediately before the person's transfer date until the new employer establishes a sick leave entitlement plan or sick leave insurance plan, and thereupon the person shall receive allowance or credit for any accrued sick leave rights or benefits. Sick leave

(12) Each new commission shall continue the provision of life insurance to pensioners formerly employed by a municipal commission in the distribution and supply of power in the area municipality served by the new commission. Life insurance provided to pensioners

(13) Nothing in this section prevents an employer from terminating the employment of an employee for cause. Termination for cause

(14) Where, in the opinion of the Minister, a person who is designated or who accepts employment under this section experiences any difficulty or hardship with regard to life insurance benefits, pension rights, pension benefits or sick leave rights or benefits, the Minister by order may do anything necessary to remedy or alleviate such difficulty or hardship. Special circumstances

**50l.** For the purposes of section 131, the 1st day of January, 1985 is the date determined by the Minister in respect of all areas within the Regional Area and on that date the municipal commissions supplying only electrical power and energy in all areas within the Regional Area immediately before the coming into force of this Part are dissolved and any by-laws establishing them passed under sections 37 and 39 of the *Public Utilities Act* shall be deemed to be repealed and the assent of the municipal electors is not required. Dissolution of existing commissions  
  
R.S.O. 1980, c. 423

**50m.** The Lieutenant Governor in Council may make regulations. Regulations

(a) for the purpose of subsection 50g (4) in respect of,

- (i) the method of determining the original cost of the assets or of any asset or of any part of any asset,
  - (ii) the allocation of the original cost of the assets or of any asset or of any part of any asset,
  - (iii) the method of determining the amount of any component of the accumulated net retail equity,
  - (iv) the allocation of the accumulated net retail equity or any component of the accumulated net retail equity,
  - (v) the method of calculating accumulated depreciation of any component of accumulated depreciation,
  - (vi) the allocation of accumulated depreciation or any component of accumulated depreciation,
  - (vii) the method of payment of the price of the assets;
- (b) for the purposes of subsection 50k (8) in respect of the apportionment and payment of the excess cost of any benefit referred to in that subsection.

Commence-  
ment

**2. This Act comes into force on the day it receives Royal Assent.**

Short title

**3. The short title of this Act is the *Regional Municipality of Haldimand-Norfolk Amendment Act, 1984*.**







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B  
B56  
**Bill 89**

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4TH SESSION, 32ND LEGISLATURE, ONTARIO

33 ELIZABETH II, 1984

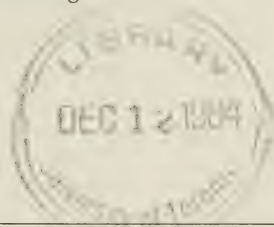
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# Bill 89

(Chapter 46  
*Statutes of Ontario, 1984*)

## **An Act to amend the Regional Municipality of Haldimand-Norfolk Act**

The Hon. C. Bennett  
*Minister of Municipal Affairs and Housing*



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<i>1st Reading</i>	May 31st, 1984
<i>2nd Reading</i>	November 1st, 1984
<i>3rd Reading</i>	November 27th, 1984
<i>Royal Assent</i>	November 27th, 1984

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Bill 89

1984

**An Act to amend the  
Regional Municipality of Haldimand-Norfolk Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** The *Regional Municipality of Haldimand-Norfolk Act*, being chapter 435 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following Part:

PART III-A

HYDRO-ELECTRIC SERVICES

**50a.** In this Part,

Interpretation

- (a) “accumulated net retail equity” means the portion of equity accumulated through debt retirement appropriations recorded for the Rural Power District relating to Ontario Hydro’s rural retail system plus the portion of the balance recorded for customers in the Stabilization of Rates and Contingencies Account, in the books of Ontario Hydro;
- (b) “municipal commission” means a hydro-electric commission or public utilities commission entrusted with the control and management of works for the retail distribution and supply of power in the Regional Area immediately before the coming into force of this Part and established or deemed to be established under Part III of the *Public Utilities Act*;
- (c) “new commission” means a commission established by section 50b;
- (d) “power” means electrical power and includes electrical energy;

R.S.O. 1980,  
c. 423



- (e) “regulations” means the regulations made under this Part;
- (f) “retail”, when used in relation to the distribution and supply of power, refers to the distribution and supply of power at voltages less than 50 kilovolts, but does not refer to works located within a transformer station that transform power from voltages greater than 50 kilovolts to voltages less than 50 kilovolts.

Commissions  
established

**50b.**—(1) On the day this Part comes into force, a hydro-electric commission for each of the Township of Delhi, the Town of Dunnville, the Town of Haldimand, the City of Nanticoke, the Township of Norfolk and the Town of Simcoe is hereby established.

Application  
of  
R.S.O. 1980,  
cc. 423, 384

(2) Each commission established by subsection (1) shall be deemed to be a commission established under Part III of the *Public Utilities Act* and a municipal commission within the meaning of the *Power Corporation Act*.

Names of  
commissions

(3) Each commission established by subsection (1) shall be known by the name set out below that relates to the area municipality in respect of which the commission is established:

1. Delhi Hydro-Electric Commission.
2. Dunnville Hydro-Electric Commission.
3. Haldimand Hydro-Electric Commission.
4. Nanticoke Hydro-Electric Commission.
5. Norfolk Hydro-Electric Commission.
6. Simcoe Hydro-Electric Commission.

Composition

R.S.O. 1980,  
c. 308

(4) Each commission established by subsection (1) shall consist of the mayor of the area municipality in respect of which the commission is established and additional members who are qualified electors under the *Municipal Elections Act* in the area municipality and who are served by the new commission on the date of their election or appointment to the new commission.

When area  
municipality  
may  
determine  
size of  
commission

(5) Except as otherwise provided in this Part, the council of each area municipality shall determine by by-law whether the number of additional members of the new commission in respect of the area municipality shall be two or four.

(6) For the term expiring with the 30th day of November, 1985, the Delhi Hydro-Electric Commission established by subsection (1) shall consist of the mayor of the Township of Delhi and four members of the Delhi Public Utilities Commission as it existed immediately before the coming into force of this Part, who shall be appointed by the council of the Township.

First  
commission,  
Delhi

(7) For the term expiring with the 30th day of November, 1985, the Dunnville Hydro-Electric Commission established by subsection (1) shall consist of the mayor of the Town of Dunnville and four members of the Dunnville Public Utilities Commission as it existed immediately before the coming into force of this Part, who shall be appointed by the council of the Town.

First  
commission,  
Dunnville

(8) For the term expiring with the 30th day of November, 1985, the Haldimand Hydro-Electric Commission established by subsection (1) shall consist of the mayor of the Town of Haldimand and six additional members who shall be appointed by the council of the Town, with two of the additional members drawn from the membership as it existed immediately before the coming into force of this Part, of each municipal commission within the area municipality.

First  
commission,  
Haldimand

(9) For the term expiring with the 30th day of November, 1985, the Nanticoke Hydro-Electric Commission established by subsection (1) shall consist of the mayor of the City of Nanticoke and six additional members who shall be appointed by the council of the City, with two of the additional members drawn from the membership as it existed immediately before the coming into force of this Part, of each municipal commission within the area municipality.

First  
commission,  
Nanticoke

(10) For the term expiring with the 30th day of November, 1985, the Norfolk Hydro-Electric Commission established by subsection (1) shall consist of the mayor of the Township of Norfolk and four members of the Port Rowan Public Utilities Commission as it existed immediately before the coming into force of this Part, who shall be appointed by the council of the Township.

First  
commission,  
Norfolk

(11) For the term expiring with the 30th day of November, 1985, the Simcoe Hydro-Electric Commission established by subsection (1) shall consist of the mayor of the Town of Simcoe, three members of the Simcoe Public Utilities Commission as it existed immediately before the coming into force of this Part, who shall be appointed by the council of the Town and one person who resides outside the part of the Town of Simcoe supplied with power by Simcoe Public Utilities Commis-

First  
commission,  
Simcoe

sion immediately before the coming into force of this Part who shall be appointed by the council of the Town.

Additional  
members  
of first  
commission

(12) Where this section provides that one or more members of a municipal commission are to be additional members for a term specified by this section and the number of such members who meet the qualifications in subsection (4) is less than the required number of additional members, the council of the area municipality in respect of which the commission was established under subsection (1) shall appoint an additional member or additional members so that there will be the required number of additional members of the new commission.

Additional  
members  
of subsequent  
commissions

(13) For terms commencing after the 30th day of November, 1985, the additional members of each new commission shall be elected by a general vote of the electors of the area municipality served by the commission, unless before the 1st day of July, 1985 the council of the area municipality provides by by-law that the additional members shall be elected by a general vote of those electors of the area municipality who reside within or are owners or tenants of land within the area served by the commission or that the additional members shall be appointed by the council.

Eligibility  
of members  
of council

(14) Members of the council of the area municipality served by a new commission may be members of the new commission, but the members of the council shall not form a majority of the new commission.

Term of  
office

(15) Subject to subsections (6) to (11), a member of a commission established by subsection (1) shall hold office for the same term as the members of council or until his successor is elected or appointed.

Delegates

(16) The council of an area municipality served by a new commission may, by by-law passed with the written consent of the mayor, appoint a delegate from among the members of the council to represent the mayor on the commission.

Salary  
of first  
commissions

(17) The salaries of the members of the new commissions for the term expiring with the 30th day of November, 1985 shall be fixed on or before the 1st day of January, 1985 in an amount that does not exceed the highest salary paid to members of the municipal commissions operating in the Regional Area on the 1st day of January, 1984.

Resignations

(18) A resignation from the council of an area municipality of a member of the council who is a member of a new com-

mission shall be deemed to be a resignation from both the council and the new commission.

**50c.**—(1) Except as herein provided, all the powers, rights, authorities and privileges that are conferred by the *Public Utilities Act* on a municipal corporation with respect to power shall, on and after the 1st day of January, 1985, be exercised on behalf of each area municipality by the new commission established in respect of the area municipality and not by the council of any municipality or any other person.

Powers of  
commissions

R.S.O. 1980,  
c. 423

(2) On and after the 1st day of January, 1985, each new commission has the sole right to distribute and supply power within the area municipality in respect of which the new commission is established.

Right to  
distribute  
and supply  
power

(3) The right of a new commission to distribute and supply power is subject to any subsisting contracts for the supply of power made under section 69 of the *Power Corporation Act*.

Exception  
to right to  
distribute  
and supply  
power

R.S.O. 1980,  
c. 384

(4) A new commission may contract with Ontario Hydro without electoral assent or other approval or authorization for the transmission and supply to the new commission of power to be distributed and sold in the area municipality served by the new commission.

Contract with  
Ontario  
Hydro

(5) A contract under subsection (4) shall be deemed to be an agreement within the meaning of clause 149 (2) (s) of the *Municipal Act*.

Idem

R.S.O. 1980,  
c. 302

(6) Except where inconsistent with the provisions of this Act, the provisions of the *Power Corporation Act* applicable to a municipal corporation that has entered into a contract with Ontario Hydro for the distribution and supply of power to the municipal corporation apply to the new commissions.

Application  
of  
R.S.O. 1980,  
c. 384

(7) With the consent of a new commission, Ontario Hydro may distribute and supply power directly to customers in the area municipality in respect of which the new commission is established.

Direct  
customers

**50d.**—(1) The council of each area municipality except the Town of Simcoe, with the consent of Ontario Hydro and without the assent of the municipal electors, by by-law,

Supply of  
power in  
all areas  
of muni-  
cipalities,  
except Town  
of Simcoe

- (a) may direct the new commission established in respect of the area municipality to commence on a day specified by the by-law the distribution and sup-



ply of power in all of the area municipality and on the specified day sections 50g, 50h and 50k shall apply with necessary modifications to the assets and employees of Ontario Hydro in the area municipality; or

- (b) may dissolve the new commission established in respect of the area municipality on a day specified by the by-law and, on the specified day,
  - (i) all assets under the control and management of and all liabilities of the new commission, and all debentures issued in respect of the distribution and supply of power in the area municipality are, without compensation, assets and liabilities of Ontario Hydro, and
  - (ii) Ontario Hydro shall commence to distribute and supply power in all of the area municipality.

Review of  
distribution  
and supply  
of power

- (2) Until such time as the power conferred by subsection (1) has been exercised,

- (a) the council of each area municipality except the Town of Simcoe shall review the distribution and supply of power within the area municipality at least once in every five years and shall determine by resolution whether or not it is financially feasible to exercise the power conferred by clause (1) (a); and
- (b) where the council of an area municipality determines as provided in clause (a) that it is financially feasible for the new commission established in respect of the municipality to distribute and supply power in the entire municipality, the council, subject to the approval of Ontario Hydro, shall exercise the power conferred by clause (1) (a).

Where  
Ontario  
Hydro to  
distribute  
and supply  
power

**50e.**—(1) Ontario Hydro shall continue to distribute and supply power in those parts of each area municipality, other than the Town of Simcoe, that Ontario Hydro served immediately before the coming into force of this Part.

Termination  
of duty to  
distribute  
and supply  
power

- (2) The duty of Ontario Hydro under subsection (1) to distribute and supply power in an area municipality is terminated,



(a) on the date specified in a by-law passed with the consent of Ontario Hydro by the council of the area municipality under clause 50d(1) (a); and

(b) on the 31st day of December, 1984 in the Town of Simcoe.

(3) Except as provided in clauses (2) (b) and (c), sections 50g, 50h and 50k do not apply in respect of the assets and employees of Ontario Hydro in an area municipality until the passing of the by-law mentioned in subsection (2).

Assets and employees

**50f.** On the 1st day of January, 1985, all assets under the control and management of and all liabilities of the municipal commissions in each area municipality are, without compensation, assets under the control and management of and liabilities of the new commission established in respect of the area municipality.

Transfer of assets and liabilities

**50g.—**(1) On or before the date on which a commission is required by subsection (2) or by by-law under section 50d to commence to distribute and supply power, the commission shall purchase on behalf of the area municipality served by the commission, and Ontario Hydro shall sell to the commission, the assets and liabilities of Ontario Hydro that pertain to the distribution and supply of power at retail in the area municipality.

Purchase of retail distribution facilities from Ontario Hydro

(2) On or before the 31st day of March, 1985, the Simcoe Hydro-Electric Commission established by section 50b shall purchase on behalf of The Corporation of the Town of Simcoe, and Ontario Hydro shall sell to the commission, the assets and liabilities of Ontario Hydro that pertain to the distribution and supply of power at retail in the Town of Simcoe.

Idem

(3) The purchases mentioned in subsections (1) and (2) shall include equipment leased by Ontario Hydro to retail customers in the area municipalities for the use of power supplied to the retail customers.

Leased equipment

(4) The purchase price shall be determined in accordance with the regulations and shall be equal to the original cost of the assets less the sum of,

Purchase price

(a) the accumulated net retail equity of the customers supplied with power through the assets; and

(b) the accumulated depreciation associated with the assets.

Where price  
to be  
determined  
by arbitration

**50h.**—(1) If the purchase price for the assets and liabilities of Ontario Hydro that pertain to the distribution and supply of power at retail in an area municipality is not determined within one year after the date on which the new commission serving the area municipality is required by by-law under this Part to commence to distribute and supply power in the area municipality or, in respect of the Town of Simcoe, before the 31st day of December, 1985, the appropriate new commission or Ontario Hydro at any time thereafter may request that the purchase price be determined by a single arbitrator agreed on by the commission and Ontario Hydro.

Application  
of  
R.S.O. 1980,  
c. 25

(2) The *Arbitrations Act* applies where a request is made under subsection (1).

Vesting  
of real  
property

**50i.**—(1) All real property transferred by this Part to the control and management of a new commission or otherwise acquired by or for the new commission shall be held by the new commission in trust for the area municipality served by the new commission.

Disposition  
of real  
property

(2) Where a new commission is of the opinion, and so declares by resolution, that any real property under its control and management is not required for its purposes, unless otherwise agreed upon by the new commission and the area municipality served by the new commission, the real property may be disposed of as follows:

1. In the event that the area municipality served by the new commission wishes in good faith to use the real property for a municipal purpose, it shall compensate the new commission for the real property at its actual cost, less accrued depreciation as shown on the books of the new commission or the assessed value of the real property, whichever is the greater, and when the municipality in good faith no longer wishes to use the real property for a municipal purpose, the area municipality may sell, lease or otherwise dispose of the real property without the assent of Ontario Hydro and may retain the proceeds of the sale, lease or disposition as municipal funds.
2. In the event that the municipality served by the new commission does not wish to use the real property in accordance with paragraph 1, the new commission shall, as soon as practicable, sell, lease or otherwise dispose of the real property at fair market value on behalf of the municipality and the net proceeds derived from the sale, lease or other disposi-

tion of the real property or the compensation paid therefor under this subsection shall be received by the new commission and shall be applied in accordance with the *Public Utilities Act*.

R.S.O. 1980,  
c. 423

**50j.** Except as otherwise provided in this Part, sections 87 to 110 apply with necessary modifications to any borrowing for the purposes of a new commission.

Borrowing

**50k.**—(1) In this section, “transfer date”, in relation to an employee of a municipal commission or Ontario Hydro, means the date on which a commission established by or under this Part assumes liability for payment of the wages or salary of the employee.

Interpretation

(2) On or before the 31st day of December, 1984, each municipal commission shall designate those current employees of the municipal commission employed by the municipal commission in the distribution and supply of power for at least twelve months, and each new commission shall offer employment to the employees designated in respect of the area municipality served by the new commission.

Transfer of  
employees

(3) On or before the 31st day of March, 1984, Ontario Hydro shall designate those of its current employees who were employed in the distribution and supply of power in the Town of Simcoe for at least the preceding twelve months, and the Simcoe Hydro-Electric Commission established by section 50b shall offer employment to the employees so designated.

Ontario  
Hydro

(4) A person who accepts employment under this section is entitled to receive, for a period of one year commencing on the transfer date, a wage or salary not less than the wage or salary the person was receiving on the day nine months before the transfer date.

Wages or  
salaries

(5) Each new commission shall be deemed to have elected to participate in the Ontario Municipal Employees Retirement System on the day this Part comes into force, and a person who accepts employment under this section shall be deemed to continue or to become a member of the System, as the case requires, on the person's transfer date, and the *Ontario Municipal Employees Retirement System Act* applies to the person as a member of the System.

Partici-  
pation in  
O.M.E.R.S.

R.S.O. 1980,  
c. 348

(6) When a person who accepts employment under this section with a new commission is entitled immediately before the person's transfer date to the benefit of a supplementary agreement between the Ontario Municipal Employees Retirement Board and the municipal commission that designated the per-

Supple-  
mentary  
agreements

son under subsection (2), the new commission shall assume, in respect of the person, all rights and obligations under the supplementary agreement as if the new commission had been a party to the agreement in the place of the municipal commission.

Transfer of  
pension  
credits  
from Ontario  
Hydro Plan

(7) Where a person who accepts employment under this section is a contributor to The Pension and Insurance Fund of Ontario Hydro immediately before the person's transfer date, the present value of the pension earned by the person in The Pension and Insurance Fund of Ontario Hydro at the transfer date or the contributions of the person in the Fund with interest accumulated and credited to the person in the Fund, whichever is the greater, shall be transferred to the Ontario Municipal Employees Retirement Fund and the person shall be given credit in the Ontario Municipal Employees Retirement System for a period of service equal to the period of service for which he was given credit in The Ontario Hydro Pension and Insurance Plan.

Pension  
guarantee

(8) Notwithstanding subsection (5), a person who accepts employment under this section with a new commission and who,

- (a) was employed by Ontario Hydro immediately before the person's transfer date; and
- (b) continues in the employment of a municipal hydro-electric commission until the person or the beneficiary of the person becomes entitled to a pension benefit,

is entitled to at least the pension benefit the person would have been entitled to under The Ontario Hydro Pension and Insurance Plan if the person's years of continuous service with the commission had been additional years of continuous service with Ontario Hydro and if there had been no change in the Plan after the 31st day of December, 1984, calculated on the basis of the wage or salary paid to the person by Ontario Hydro and the commission, and the cost, if any, of the pension benefit over the cost of the pension benefit to which the person is entitled under subsection (5) shall be apportioned and paid by the body and in the manner provided by the regulations.

Group life  
insurance

(9) A person who accepts employment under this section is entitled as a term of the person's employment to continue as a member of the group life insurance plan in which the person was a member with the person's former employer until the



effective date of a common group life insurance plan covering all eligible employees of the person's new employer.

(10) On or before the 31st day of December, 1985, each new commission shall provide a common group life insurance plan covering all of the eligible employees of the new commission, and the plan shall provide to any person accepting employment under this section, by option or otherwise, insurance coverage not inferior to the insurance coverage to which the person was entitled immediately before the person's transfer date. Idem

(11) A person who accepts employment under this section shall continue to enjoy the rights and benefits of sick leave entitlements or sick leave insurance provided by the former employer of the person immediately before the person's transfer date until the new employer establishes a sick leave entitlement plan or sick leave insurance plan, and thereupon the person shall receive allowance or credit for any accrued sick leave rights or benefits. Sick leave

(12) Each new commission shall continue the provision of life insurance to pensioners formerly employed by a municipal commission in the distribution and supply of power in the area municipality served by the new commission. Life insurance provided to pensioners

(13) Nothing in this section prevents an employer from terminating the employment of an employee for cause. Termination for cause

(14) Where, in the opinion of the Minister, a person who is designated or who accepts employment under this section experiences any difficulty or hardship with regard to life insurance benefits, pension rights, pension benefits or sick leave rights or benefits, the Minister by order may do anything necessary to remedy or alleviate such difficulty or hardship. Special circumstances

**50l.** For the purposes of section 131, the 1st day of January, 1985 is the date determined by the Minister in respect of all areas within the Regional Area and on that date the municipal commissions supplying only electrical power and energy in all areas within the Regional Area immediately before the coming into force of this Part are dissolved and any by-laws establishing them passed under sections 37 and 39 of the *Public Utilities Act* shall be deemed to be repealed and the assent of the municipal electors is not required. Dissolution of existing commissions

R.S.O. 1980, c. 423

**50m.** The Lieutenant Governor in Council may make regulations, Regulations

(a) for the purpose of subsection 50g (4) in respect of,



- (i) the method of determining the original cost of the assets or of any asset or of any part of any asset,
  - (ii) the allocation of the original cost of the assets or of any asset or of any part of any asset,
  - (iii) the method of determining the amount of any component of the accumulated net retail equity,
  - (iv) the allocation of the accumulated net retail equity or any component of the accumulated net retail equity,
  - (v) the method of calculating accumulated depreciation of any component of accumulated depreciation,
  - (vi) the allocation of accumulated depreciation or any component of accumulated depreciation,
  - (vii) the method of payment of the price of the assets;
- (b) for the purposes of subsection 50k (8) in respect of the apportionment and payment of the excess cost of any benefit referred to in that subsection.

Commence-  
ment

**2. This Act comes into force on the day it receives Royal Assent.**

Short title

**3. The short title of this Act is the *Regional Municipality of Haldimand-Norfolk Amendment Act, 1984*.**

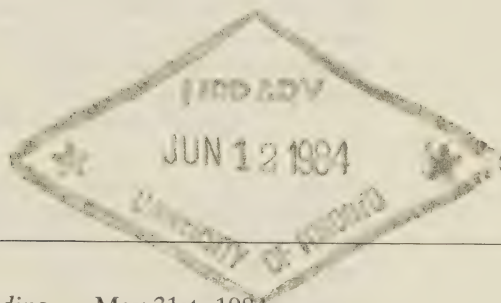




# Bill 90

## **An Act to amend the District Municipality of Muskoka Act**

The Hon. C. Bennett  
*Minister of Municipal Affairs and Housing*



*1st Reading*      May 31st, 1984  
*2nd Reading*  
*3rd Reading*  
*Royal Assent*

## EXPLANATORY NOTES

The Bill establishes new hydro-electric commissions for the municipalities of Bracebridge, Gravenhurst, Huntsville and Muskoka Lakes.

The council of each area municipality will determine whether, for terms after the first term, the members of its commission should be elected or appointed.

The councils of the townships of Georgian Bay and Lake of Bays are authorized to establish similar new hydro-electric commissions with the consent of Ontario Hydro.

The members of each new commission will be the mayor of the area municipality and additional members who are qualified municipal electors in the area municipality.

Customers in Bracebridge, Gravenhurst, Huntsville and Muskoka Lakes who are now supplied with power by Ontario Hydro will continue to be supplied by Ontario Hydro until the council of the area municipality, with the consent of Ontario Hydro, passes a by-law requiring the new commission to commence the distribution and supply of power in all of the area municipality.

In the interim, the councils of the area municipalities are required to review the supply of power at least once in every five years.

Provision is made for the transfer of employees in certain circumstances and for the protection of their salaries and benefits.



Bill 90

1984

**An Act to amend the  
District Municipality of Muskoka Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** The *District Municipality of Muskoka Act*, being chapter 121 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following Part:

PART V-A

HYDRO-ELECTRIC SERVICES

**50a.** In this Part,

Interpretation

- (a) “accumulated net retail equity” means the portion of equity accumulated through debt retirement appropriations recorded for the Rural Power District relating to Ontario Hydro’s rural retail system plus the portion of the balance recorded for customers in the Stabilization of Rates and Contingencies Account, in the books of Ontario Hydro;
- (b) “municipal commission” means a hydro-electric commission or public utilities commission entrusted with the control and management of works for the retail distribution and supply of power in the District Area immediately before the coming into force of this Part and established or deemed to be established under Part III of the *Public Utilities Act*;
- (c) “new commission” means a commission established by section 50b;
- (d) “power” means electrical power and includes electrical energy;

R.S.O. 1980,  
c. 423

- (e) “regulations” means the regulations made under this Part;
- (f) “retail”, when used in relation to the distribution and supply of power, refers to the distribution and supply of power at voltages less than 50 kilovolts, but does not refer to works located within a transformer station that transform power from voltages greater than 50 kilovolts to voltages less than 50 kilovolts.

Commissions  
established

**50b.**—(1) On the day this Part comes into force, a hydro-electric commission for each of the Town of Bracebridge, the Town of Gravenhurst, the Town of Huntsville and the Township of Muskoka Lakes is hereby established.

Application  
of  
R.S.O. 1980,  
cc. 423, 384

(2) Each commission established by subsection (1) shall be deemed to be a commission established under Part III of the *Public Utilities Act* and a municipal commission within the meaning of the *Power Corporation Act*.

Names of  
commissions

(3) Each commission established by subsection (1) shall be known by the name set out below that relates to the area municipality in respect of which the commission is established:

1. Bracebridge Hydro-Electric Commission.
2. Gravenhurst Hydro-Electric Commission.
3. Huntsville Hydro-Electric Commission.
4. Muskoka Lakes Hydro-Electric Commission.

Composition

R.S.O. 1980,  
c. 308

(4) Each new commission shall consist of the mayor of the area municipality in respect of which the new commission is established and additional members who are qualified electors under the *Municipal Elections Act* in the area municipality and who are served by the new commission on the date of their election or appointment to the new commission.

When area  
municipality  
may  
determine  
size of  
commission

(5) Except as otherwise provided in this Part, the council of each area municipality shall determine by by-law whether the number of additional members of the commission established by subsection (1) in respect of the area municipality shall be two or four.

Composition  
of first  
commissions

(6) For the term expiring with the 30th day of November, 1985, each new commission shall consist of the mayor of the area municipality in respect of the commission is established and,

- (a) in the case of Muskoka Lakes Hydro-Electric Commission, two additional members; and
- (b) in the case of each other new commission, four additional members,

who shall be appointed by the council of the area municipality in respect of which the new commission is established from among the members of the municipal commission that served the area municipality on the day immediately before the coming into force of this Part.

(7) Where this section provides that one or more members of a municipal commission are to be additional members for a term specified by this section and the number of such members who meet the qualifications in subsection (4) is less than the required number of additional members, the council of the area municipality in respect of which the new commission was established shall appoint an additional member or additional members so that there will be the required number of additional members of the new commission.

Additional  
members  
of first  
commission

(8) For terms commencing after the 30th day of November, 1985, the additional members of each new commission shall be elected by a general vote of the electors of the area municipality served by the new commission, unless before the 1st day of July, 1985 the council of the area municipality provides by by-law that the additional members shall be elected by a general vote of those electors of the area municipality who reside within the area served by the commission or that the additional members shall be appointed by the council.

Additional  
members of  
subsequent  
commissions

(9) Members of the council of the area municipality served by a new commission may be members of the new commission, but the members of the council shall not form a majority of the new commission.

Eligibility  
of members  
of council

(10) Subject to subsection (6), a member of a commission established by subsection (1) shall hold office for the same term as the members of council or until his successor is elected or appointed.

Term of  
office

(11) The council of an area municipality served by a new commission may, by by-law passed with the written consent of the mayor, appoint a delegate from among the members of the council to represent the mayor on the commission.

Delegates

(12) The salaries of the members of the new commissions for the term expiring with the 30th day of November, 1985 shall be fixed on or before the 1st day of January, 1985 in an

Salary  
of first  
commissions

amount that does not exceed the highest salary paid to members of the municipal commissions operating in the District Area on the 1st day of January, 1984.

**Resignations**

(13) A resignation from the council of an area municipality of a member of the council who is a member of a new commission shall be deemed to be a resignation from both the council and the new commission.

**Powers of commissions**

R.S.O. 1980,  
c. 423

**50c.**—(1) Except as herein provided, all the powers, rights, authorities and privileges that are conferred by the *Public Utilities Act* on a municipal corporation with respect to power shall, on and after the 1st day of January, 1985, be exercised on behalf of each area municipality by the new commission established in respect of the area municipality and not by the council of any municipality or any other person.

**Right to distribute and supply power**

(2) On and after the 1st day of January, 1985, each new commission has the sole right to distribute and supply power within the area municipality in respect of which the new commission is established.

**Exception to right to distribute and supply power**

R.S.O. 1980,  
c. 384

(3) The right of a new commission to distribute and supply power is subject to any subsisting contracts for the supply of power made under section 69 of the *Power Corporation Act*.

**Contract with Ontario Hydro**

(4) A new commission may contract with Ontario Hydro without electoral assent or other approval or authorization for the transmission and supply to the new commission of power to be distributed and sold in the area municipality served by the new commission.

**Idem**

R.S.O. 1980,  
c. 302

(5) A contract under subsection (4) shall be deemed to be an agreement within the meaning of clause 149 (2) (s) of the *Municipal Act*.

**Application of R.S.O. 1980, c. 384**

(6) Except where inconsistent with the provisions of this Act, the provisions of the *Power Corporation Act* applicable to a municipal corporation that has entered into a contract with Ontario Hydro for the distribution and supply of power to the municipal corporation apply to the new commissions.

**Direct customers**

(7) With the consent of a new commission, Ontario Hydro may distribute and supply power directly to customers in the area municipality in respect of which the new commission is established.



**50d.**—(1) The council of each of the Township of Georgian Bay and the Township of Lake of Bays, with the consent of Ontario Hydro, may establish by by-law a hydro-electric commission for the township and, commencing on the date that the council shall specify in the by-law, the commission shall distribute and supply power in all of the township.

Establishment of commissions in Georgian Bay and Lake of Bays

(2) A commission established under subsection (1) shall be known by the name set out below that relates to the area municipality in respect of which the commission is established:

Names of commissions

- 1. Georgian Bay Hydro-Electric Commission.
- 2. Lake of Bays Hydro-Electric Commission.

(3) A commission established under subsection (1),

Composition

- (a) shall be deemed to be a commission established under Part III of the *Public Utilities Act* and a municipal commission within the meaning of the *Power Corporation Act*; and
- (b) shall consist of the mayor of the area municipality in respect of which the commission is established and additional members who are qualified electors under the *Municipal Elections Act* in the area municipality.

R.S.O. 1980, cc. 423, 384

R.S.O. 1980, c. 308

(4) The council of an area municipality in respect of which a commission is established under subsection (1) shall appoint the first additional members of the commission.

First additional members

(5) For terms after the first term, the additional members of a commission established under subsection (1) in respect of an area municipality shall be elected by a general vote of the electors of the area municipality unless, before the completion of the first term of office of the members of the commission, the council of the area municipality provides by by-law that the additional members shall be elected by a general vote of those electors of the area municipality who reside within the area served by the commission or that the additional members shall be appointed by the council.

Subsequent additional members

(6) Upon the establishment of a commission under subsection (1),

Application of other sections of Act

- (a) subsections 50b(5), (9), (10), (11) and (13), section 50c, subsection 50f(2) and sections 50h to 50l shall apply with necessary modifications and, for the purpose, the dates mentioned therein shall be deemed



to be the dates that shall be specified in the by-law mentioned in subsection (1); and

- (b) the commission, for the purposes of clause (a), shall be deemed to be a commission established by section 50b.

Review of  
distribution  
and supply  
of power

- (7) Until such time as the power conferred by subsection (1) has been exercised,

- (a) the council of each of the Township of Georgian Bay and the Township of Lake of Bays shall review the distribution and supply of power within the area municipality at least once in every five years, and shall determine by resolution whether or not it is financially feasible to exercise the power conferred by subsection (1); and
- (b) where the council determines as provided in clause (a) that it is financially feasible to do so, the council shall exercise the power conferred by subsection (1).

Supply of  
power in all  
areas of  
municipalities  
other than  
Georgian  
Bay  
and  
Lake of Bays

**50e.**—(1) The council of each area municipality other than the Township of Georgian Bay and the Township of Lake of Bays, with the consent of Ontario Hydro and without the assent of the municipal electors, by by-law,

- (a) may direct the new commission established in respect of the area municipality to commence on a day specified by the by-law the distribution and supply of power in all of the area municipality and on the specified day sections 50h to 50l shall apply with necessary modifications to the assets and employees of Ontario Hydro in the area municipality; or
- (b) may dissolve the new commission established in respect of the area municipality on a day specified by the by-law and, on the specified day,
  - (i) all assets under the control and management of and all liabilities of the new commission, and all debentures issued in respect of the distribution and supply of power in the area municipality are, without compensation, assets and liabilities of Ontario Hydro, and
  - (ii) Ontario Hydro shall commence to distribute and supply power in all of the area municipality.

(2) Until such time as the power conferred by subsection (1) has been exercised,

Review of distribution and supply of power

- (a) the council of each of the said area municipalities shall review the distribution and supply of power within their respective municipalities at least once in every five years and shall determine by resolution whether or not it is financially feasible to exercise the power conferred by clause (1) (a); and
- (b) where the council of an area municipality determines as provided in clause (a) that it is financially feasible for the new commission established in respect of the municipality to distribute and supply power in the entire municipality, the council, subject to the approval of Ontario Hydro, shall exercise the power conferred by clause (1) (a).

**50f.**—(1) Ontario Hydro shall continue to distribute and supply power in those areas of each area municipality that Ontario Hydro served immediately before the coming into force of this Part.

Where Ontario Hydro to distribute and supply power

(2) The duty of Ontario Hydro under subsection (1) to distribute and supply power in an area municipality is terminated, on the date specified in the by-law, by a by-law passed with the consent of Ontario Hydro by the council of the area municipality under subsection 50d(1) or clause 50e(1) (a).

Termination of duty to distribute and supply power

(3) Sections 50h and 50l do not apply in respect of the assets and employees of Ontario Hydro in an area municipality until the passing of the by-law referred to in subsection (2).

Assets and employees

**50g.** On the 1st day of January, 1985, all assets under the control and management of and all liabilities of the municipal commissions in each of the Town of Bracebridge, the Town of Gravenhurst, the Town of Huntsville and the Township of Muskoka Lakes are, without compensation, assets under the control and management of and liabilities of the new commission established in respect of the area municipality.

Transfer of assets and liabilities

**50h.**—(1) On or before the date on which a commission is required by by-law under section 50d or 50e to commence to distribute and supply power, the commission shall purchase on behalf of the area municipality served by the commission, and Ontario Hydro shall sell to the commission, the assets and liabilities of Ontario Hydro that pertain to the distribution and supply of power at retail in the area municipality.

Purchase of retail distribution facilities from Ontario Hydro

Leased  
equipment

(2) The purchases mentioned in subsection (1) shall include equipment leased by Ontario Hydro to retail customers in the area municipalities for the use of power supplied to the retail customers.

Purchase  
price

(3) The purchase price shall be determined in accordance with the regulations and shall be equal to the original cost of the assets less the sum of,

- (a) the accumulated net retail equity of the customers supplied with power through the assets; and
- (b) the accumulated depreciation associated with the assets.

Where price  
to be  
determined  
by  
arbitration

**50i.**—(1) If the purchase price for the assets and liabilities of Ontario Hydro that pertain to the distribution and supply of power at retail in an area municipality is not determined within one year after the date on which the new commission serving the area municipality is required by by-law under this Part to commence to distribute and supply power in the area municipality, the commission or Ontario Hydro at any time thereafter may request that the purchase price be determined by a single arbitrator agreed on by the commission and Ontario Hydro.

Application  
of  
R.S.O. 1980,  
c. 25

(2) The *Arbitrations Act* applies where a request is made under subsection (1).

Vesting  
of real  
property

**50j.**—(1) All real property transferred by this Part to the control and management of a new commission or otherwise acquired by or for the new commission shall be held by the new commission in trust for the area municipality served by the new commission.

Disposition  
of real  
property

(2) Where a new commission is of the opinion, and so declares by resolution, that any real property under its control and management is not required for its purposes, unless otherwise agreed upon by the new commission and the area municipality served by the new commission, the real property may be disposed of as follows:

1. In the event that the area municipality served by the new commission wishes in good faith to use the real property for a municipal purpose, it shall compensate the new commission for the real property at its actual cost, less accrued depreciation as shown on the books of the new commission or the assessed value of the real property, whichever is the greater, and when the municipality in good faith no longer

wishes to use the real property for a municipal purpose, the area municipality may sell, lease or otherwise dispose of the real property without the assent of Ontario Hydro and may retain the proceeds of the sale, lease or disposition as municipal funds.

2. In the event that the municipality served by the new commission does not wish to use the real property in accordance with paragraph 1, the new commission shall, as soon as practicable, sell, lease or otherwise dispose of the real property at fair market value on behalf of the municipality and the net proceeds derived from the sale, lease or other disposition of the real property or the compensation paid therefor under this subsection shall be received by the new commission and shall be applied in accordance with the *Public Utilities Act*.

R.S.O. 1980,  
c. 423

**50k.** Except as otherwise provided in this Part, sections 84 to 106 apply with necessary modifications to any borrowing for the purposes of a new commission.

Borrowing

**50l.**—(1) In this section, “transfer date”, in relation to an employee of a municipal commission or Ontario Hydro, means the date on which a commission established by or under this Part assumes liability for payment of the wages or salary of the employee.

Interpretation

(2) On or before the 31st day of December, 1984, each municipal commission that supplied power in the District Area immediately before the coming into force of this Part shall designate those current employees of the municipal commission employed by the municipal commission in the distribution and supply of power for at least twelve months, and each new commission shall offer employment to the employees designated in respect of the area municipality served by the new commission.

Transfer of  
employees

(3) On or before the date specified in a by-law passed under subsection 50d (1) or clause 50e (1) (a), Ontario Hydro shall designate those of its current employees who were employed in the distribution and supply of power in the applicable area municipality for at least the preceding twelve months, and the new commission established in respect of that area municipality shall offer employment to the employees so designated.

Ontario  
Hydro

(4) A person who accepts employment under this section is entitled to receive, for a period of one year commencing on the transfer date, a wage or salary not less than the wage or

Wages or  
salaries



salary the person was receiving on the day nine months before the transfer date.

Participation in  
O.M.E.R.S.

(5) Each new commission shall be deemed to have elected to participate in the Ontario Municipal Employees Retirement System on the day this Part comes into force, and a person who accepts employment under this section shall be deemed to continue or to become a member of the System, as the case requires, on the person's transfer date, and the *Ontario Municipal Employees Retirement System Act* applies to the person as a member of the System.

R.S.O. 1980,  
c. 348

Supplementary  
agreements

(6) When a person who accepts employment under this section with a new commission is entitled immediately before the person's transfer date to the benefit of a supplementary agreement between the Ontario Municipal Employees Retirement Board and the municipal commission that designated the person under subsection (2), the new commission shall assume, in respect of the person, all rights and obligations under the supplementary agreement as if the new commission had been a party to the agreement in the place of the municipal commission.

Transfer of  
pension  
credits  
from Ontario  
Hydro Plan

(7) Where a person who accepts employment under this section is a contributor to The Pension and Insurance Fund of Ontario Hydro immediately before the person's transfer date, the present value of the pension earned by the person in The Pension and Insurance Fund of Ontario Hydro at the transfer date or the contributions of the person in the Fund with interest accumulated and credited to the person in the Fund, whichever is the greater, shall be transferred to the Ontario Municipal Employees Retirement Fund and the person shall be given credit in the Ontario Municipal Employees Retirement System for a period of service equal to the period of service for which he was given credit in The Ontario Hydro Pension and Insurance Plan.

Pension  
guarantee

(8) Notwithstanding subsection (5), a person who accepts employment under this section with a new commission and who,

- (a) was employed by Ontario Hydro immediately before the person's transfer date; and
- (b) continues in the employment of a municipal hydro-electric commission until the person or the beneficiary of the person becomes entitled to a pension benefit,



is entitled to at least the pension benefit the person would have been entitled to under The Ontario Hydro Pension and Insurance Plan if the person's years of continuous service with the commission had been additional years of continuous service with Ontario Hydro and if there had been no change in the Plan after the 31st day of December, 1984, calculated on the basis of the wage or salary paid to the person by Ontario Hydro and the commission, and the cost, if any, of the pension benefit over the cost of the pension benefit to which the person is entitled under subsection (5) shall be apportioned and paid by the body and in the manner provided by the regulations.

(9) A person who accepts employment under this section is entitled as a term of the person's employment to continue as a member of the group life insurance plan in which the person was a member with the person's former employer until the effective date of a common group life insurance plan covering all eligible employees of the person's new employer.

Group life insurance

(10) On or before the 31st day of December, 1985, each new commission shall provide a common group life insurance plan covering all of the eligible employees of the new commission, and the plan shall provide to any person accepting employment under this section, by option or otherwise, insurance coverage not inferior to the insurance coverage to which the person was entitled immediately before the person's transfer date.

Idem

(11) A person who accepts employment under this section shall continue to enjoy the rights and benefits of sick leave entitlements or sick leave insurance provided by the former employer of the person immediately before the person's transfer date until the new employer establishes a sick leave entitlement plan or sick leave insurance plan, and thereupon the person shall receive allowance or credit for any accrued sick leave rights or benefits.

Sick leave

(12) Each new commission shall continue the provision of life insurance to pensioners formerly employed by a municipal commission in the distribution and supply of power in the area municipality served by the new commission.

Life insurance provided to pensioners

(13) Nothing in this section prevents an employer from terminating the employment of an employee for cause.

Termination for cause

(14) Where, in the opinion of the Minister, a person who is designated or who accepts employment under this section experiences any difficulty or hardship with regard to life insurance benefits, pension rights, pension benefits or sick leave

Special circumstances

rights or benefits, the Minister by order may do anything necessary to remedy or alleviate such difficulty or hardship.

Dissolution  
of existing  
commissions

**50m.** For the purposes of section 128, the 1st day of January, 1985 is the date determined by the Minister in respect of all areas within the District Area and on that date the municipal commissions supplying only electrical power and energy in all areas within the District Area immediately before the coming into force of this Part are dissolved and any by-laws establishing them passed under sections 37 and 39 of the *Public Utilities Act* shall be deemed to be repealed and the assent of the municipal electors is not required.

R.S.O. 1980,  
c. 423

Regulations

**50n.** The Lieutenant Governor in Council may make regulations,

- (a) for the purpose of subsection 50h (3) in respect of,
  - (i) the method of determining the original cost of the assets or of any asset or of any part of any asset,
  - (ii) the allocation of the original cost of the assets or of any asset or of any part of any asset,
  - (iii) the method of determining the amount of any component of the accumulated net retail equity,
  - (iv) the allocation of the accumulated net retail equity or any component of the accumulated net retail equity,
  - (v) the method of calculating accumulated depreciation of any component of accumulated depreciation,
  - (vi) the allocation of accumulated depreciation or any component of accumulated depreciation,
  - (vii) the method of payment of the price of the assets;
- (b) for the purposes of subsection 50l (8) in respect of the apportionment and payment of the excess cost of any benefit referred to in that subsection.

**2.** This Act comes into force on the day it receives Royal Assent. Commence-  
ment

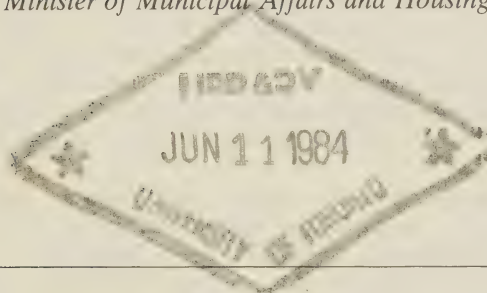
**3.** The short title of this Act is the *District Municipality of Muskoka Amendment Act, 1984*. Short title



# Bill 91

## An Act to amend the Regional Municipality of Sudbury Act

The Hon. C. Bennett  
*Minister of Municipal Affairs and Housing*



*1st Reading*      May 31st, 1984  
*2nd Reading*  
*3rd Reading*  
*Royal Assent*



## EXPLANATORY NOTES

The Bill establishes new hydro-electric commissions for the municipalities of Capreol and Nickel Centre.

The members of each commission will be the mayor of the area municipality and additional members qualified as municipal electors in the municipality.

The council of each area municipality will determine whether, for terms after the first term, the members of its commission should be elected or appointed.

Customers in Capreol and Nickel Centre now supplied with power by Ontario Hydro will continue to be supplied by Ontario Hydro until the council of the area municipality, with the consent of Ontario Hydro, directs the new commission to supply power in all areas of the municipality.

Customers in Onaping Falls, Rayside-Balfour, Valley East and Walden will continue to be supplied by Ontario Hydro until the council of the area municipality, with the consent of Ontario Hydro, establishes a commission to supply power in all areas of the municipality.

In the interim, the councils of Capreol, Nickel Centre, Onaping Falls, Rayside-Balfour, Valley East and Walden are required to review the supply of power at least once in every five years.

Existing arrangements pursuant to which certain areas of Nickel Centre, Onaping Falls and Walden are currently being supplied power by privately owned corporations are not affected by this Bill.

Provision is made for the transfer of employees in certain circumstances and for the protection of their salaries and benefits.

**Bill 91**

**1984**

**An Act to amend the  
Regional Municipality of Sudbury Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1. The *Regional Municipality of Sudbury Act*, being chapter 441 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following Part:**

**PART IV-A**

**HYDRO-ELECTRIC SERVICES**

**26a.** In this Part,

Interpretation

- (a) "accumulated net retail equity" means the portion of equity accumulated through debt retirement appropriations recorded for the Rural Power District relating to Ontario Hydro's rural retail system plus the portion of the balance recorded for customers in the Stabilization of Rates and Contingencies Account, in the books of Ontario Hydro;
- (b) "municipal commission" means a hydro-electric commission or public utilities commission, other than the Sudbury Hydro-Electric Commission, entrusted with the control and management of works for the retail distribution and supply of power in the Regional Area immediately before the coming into force of this Part and established or deemed to be established under Part III of the *Public Utilities Act*;
- (c) "new commission" means a commission established by section 26b;
- (d) "power" means electrical power and includes electrical energy;

R.S.O. 1980,  
c. 423

(e) “regulations” means the regulations made under this Part;

(f) “retail”, when used in relation to the distribution and supply of power, refers to the distribution and supply of power at voltages less than 50 kilovolts, but does not refer to works located within a transformer station that transform power from voltages greater than 50 kilovolts to voltages less than 50 kilovolts.

Commissions  
established

**26b.**—(1) On the day this Part comes into force, a hydro-electric commission for each of the towns of Capreol and Nickel Centre is hereby established.

Application  
of  
R.S.O. 1980,  
cc. 423, 384

(2) Each commission established by subsection (1) shall be deemed to be a commission established under Part III of the *Public Utilities Act* and a municipal commission within the meaning of the *Power Corporation Act*.

Names of  
commissions

(3) Each commission established by subsection (1) shall be known by the name set out below that relates to the area municipality in respect of which the commission is established:

1. Capreol Hydro-Electric Commission.

2. Nickel Centre Hydro-Electric Commission.

Composition

R.S.O. 1980,  
c. 308

(4) Each commission established by subsection (1) shall consist of the mayor of the area municipality in respect of which the commission is established and additional members who are qualified electors under the *Municipal Elections Act* in the area municipality and who are served by a new commission on the date of their election or appointment to the new commission.

When area  
municipality  
may  
determine  
size of  
commission

(5) Except as otherwise provided in this Part, the council of each area municipality shall determine by by-law whether the number of additional members of the commission established by subsection (1) in respect of the area municipality shall be two or four.

First  
commission,  
Capreol

(6) For the term expiring with the 30th day of November, 1985, the Capreol Hydro-Electric Commission established by subsection (1) shall consist of the mayor of the Town of Capreol and two additional members residing in the Town of Capreol, who were members of the Capreol Hydro-Electric Commission as it existed immediately before the coming into force of this Part, who shall be appointed by the council of the Town.

(7) For the term expiring with the 30th day of November, 1985, the Nickel Centre Hydro-Electric Commission established by subsection (1) shall consist of the mayor of the Town of Nickel Centre and two additional members residing in the Town of Nickel Centre, who were members of the Coniston Hydro-Electric Commission as it existed immediately before the coming into force of this Part, who shall be appointed by the council of the Town.

First  
commission,  
Nickel  
Centre

(8) Where this section provides that one or more members of a municipal commission are to be additional members for a term specified by this section and the number of such members who meet the qualifications in subsection (4) is less than the required number of additional members, the council of the area municipality in respect of which the commission was established under subsection (1) shall appoint an additional member or additional members so that there will be the required number of additional members of the new commission.

Additional  
members of  
first  
commissions

(9) For terms commencing after the 30th day of November, 1985, the additional members of each new commission shall be elected by a general vote of the electors of the area municipality served by the commission, unless before the 1st day of July, 1985 the council of the area municipality provides by by-law that the additional members shall be elected by a general vote of those electors of the area municipality who reside within the area served by the commission or that the additional members shall be appointed by the council.

Additional  
members of  
subsequent  
commissions

(10) Members of the council of the area municipality served by a new commission may be members of the new commission, but the members of the council shall not form a majority of the new commission.

Eligibility  
of members  
of council

(11) Subject to subsections (6) and (7), a member of a new commission shall hold office for the same term as the members of council or until his successor is elected or appointed.

Term of  
office

(12) The council of an area municipality served by a new commission may, by by-law passed with the written consent of the mayor, appoint a delegate from among the members of the council to represent the mayor on the commission.

Delegates

(13) The salaries of the members of the new commissions for the term expiring with the 30th day of November, 1985 shall be fixed on or before the 1st day of January, 1985 in an amount that does not exceed the highest salary paid to members of the municipal commissions operating in the Regional Area on the 1st day of July, 1984.

Salary  
of first  
commissions



- Resignations (14) A resignation from the council of an area municipality of a member of the council who is a member of a new commission shall be deemed to be a resignation from both the council and the new commission.
- Powers of commissions  
R.S.O. 1980, c. 423 **26c.**—(1) Except as herein provided, all the powers, rights, authorities and privileges that are conferred by the *Public Utilities Act* on a municipal corporation with respect to power shall, on and after the 1st day of January, 1985, be exercised on behalf of each area municipality by the new commission established in respect of the area municipality and not by the council of any municipality or any other person.
- Right to distribute and supply power (2) On and after the 1st day of January, 1985, each new commission has the sole right to distribute and supply power within the area municipality in respect of which the new commission is established.
- Exception to right to distribute and supply power  
R.S.O. 1980, c. 384 (3) The right of a new commission to distribute and supply power,  
(a) is subject to any subsisting contracts for the supply of power made under section 69 of the *Power Corporation Act*; and  
(b) is subject to the rights of Ontario Hydro or any other person or body other than a municipal commission that is supplying power in the area served by the new commission on the 31st day of December, 1984.
- Contract with Ontario Hydro (4) A new commission may contract with Ontario Hydro without electoral assent or other approval or authorization for the transmission and supply to the new commission of power to be distributed and sold in the area municipality served by the new commission.
- Idem  
R.S.O. 1980, c. 302 (5) A contract under subsection (4) shall be deemed to be an agreement within the meaning of clause 149 (2) (s) of the *Municipal Act*.
- Application of  
R.S.O. 1980, c. 384 (6) Except where inconsistent with the provisions of this Act, the provisions of the *Power Corporation Act* applicable to a municipal corporation that has entered into a contract with Ontario Hydro for the distribution and supply of power to the municipal corporation apply to the new commissions.
- Direct customers (7) With the consent of a new commission, Ontario Hydro may distribute and supply power directly to customers in the



area municipality in respect of which the new commission is established.

**26d.**—(1) The council of each of the Town of Onaping Falls, the Town of Rayside-Balfour, the Town of Valley East and the Town of Walden, with the consent of Ontario Hydro, may establish by by-law a hydro-electric commission for the town and, commencing on the date that the council shall specify in the by-law, the commission shall distribute and supply power in all of the town.

Establishment of commission by by-law in Onaping Falls, Rayside-Balfour, Valley East and Walden

(2) The duty of a commission established under subsection (1) is subject to the rights of any person or body other than Ontario Hydro that is supplying power in the area served by the commission on the date that the commission commences to distribute and supply power.

Rights of existing suppliers

(3) A commission established under subsection (1) shall be known by the name set out below that relates to the area municipality in respect of which the commission is established:

Names of commissions

1. Onaping Falls Hydro-Electric Commission.
2. Rayside-Balfour Hydro-Electric Commission.
3. Valley East Hydro-Electric Commission.
4. Walden Hydro-Electric Commission.

(4) A commission established under subsection (1),

Composition

(a) shall be deemed to be a commission established under Part III of the *Public Utilities Act* and a municipal commission within the meaning of the *Power Corporation Act*; and

R.S.O. 1980, cc. 423, 384

(b) shall consist of the mayor of the area municipality in respect of which the commission is established and additional members who are qualified electors under the *Municipal Elections Act* in the area municipality.

R.S.O. 1980, c. 308

(5) The council of an area municipality in respect of which a commission is established under subsection (1) shall appoint the first additional members of the commission.

First additional members

(6) For terms after the first term, the additional members of a commission established under subsection (1) in respect of an area municipality shall be elected by a general vote of the electors of the area municipality unless, before the completion

Subsequent additional members

of the first term of office of the members of the commission, the council of the area municipality provides by by-law that the additional members shall be elected by a general vote of those electors of the area municipality who reside within the area served by the commission or that the additional members shall be appointed by the council.

Application  
of other  
sections  
of Act

(7) Upon the establishment of a commission under subsection (1),

- (a) subsections 26b (5), (10), (11), (12) and (14), section 26c, subsection 26f (2) and sections 26h to 26l shall apply with necessary modifications and, for the purpose, the dates mentioned therein shall be deemed to be the dates that shall be specified in the by-law mentioned in subsection (1); and
- (b) the commission, for the purposes of clause (a), shall be deemed to be a commission established by section 26b.

Review of  
distribution  
and supply  
of power

(8) Until such time as the power conferred by subsection (1) has been exercised,

- (a) the council of each of the Town of Onaping Falls, the Town of Rayside-Balfour, the Town of Valley East and the Town of Walden shall review the distribution and supply of power within the area municipality at least once in every five years, and shall determine by resolution whether or not it is financially feasible to exercise the power conferred by subsection (1); and
- (b) where the council determines as provided in clause (a) that it is financially feasible, the council shall exercise the power conferred by subsection (1).

Supply of  
power in  
all areas  
of municipa-  
lities of  
Capreol,  
Nickel  
Centre

**26e.**—(1) The council of each of the Town of Capreol and the Town of Nickel Centre, with the consent of Ontario Hydro and without the assent of the municipal electors, by by-law,

- (a) may direct the new commission established in respect of the area municipality to commence on a day specified by the by-law the distribution and supply of power in all of the area municipality and on the specified day sections 26h and 26l shall apply with necessary modifications to the assets and employees of Ontario Hydro in the area municipality; or

(b) may dissolve the new commission established in respect of the area municipality on a day specified by the by-law and, on the specified day,

(i) all assets under the control and management of and all liabilities of the new commission, and all debentures issued in respect of the distribution and supply of power in the area municipality are, without compensation, assets and liabilities of Ontario Hydro, and

(ii) Ontario Hydro shall commence to distribute and supply power in all of the area municipality.

(2) Until such time as the power conferred by subsection (1) has been exercised,

Review of  
distribution  
and supply  
of power

(a) the council of each of the Town of Capreol and the Town of Nickel Centre shall review the distribution and supply of power within their respective municipalities at least once in every five years and shall determine by resolution whether or not it is financially feasible to exercise the power conferred by clause (1) (a); and

(b) where the council of the Town of Capreol or the Town of Nickel Centre determines as provided in clause (a) that it is financially feasible for the new commission established in respect of the municipality to distribute and supply power in the entire municipality, the council, subject to the approval of Ontario Hydro, shall exercise the power conferred by clause (1) (a).

(3) The duty of a new commission under subsection (1) is subject to the rights of any person or body other than Ontario Hydro or a municipal commission that is supplying power in the Town of Nickel Centre on the day immediately before the day specified by the by-law mentioned in subsection (1).

Rights of  
existing  
suppliers

**26f.**—(1) Ontario Hydro shall continue to distribute and supply power in those areas of the Town of Capreol, the Town of Nickel Centre, the Town of Onaping Falls, the Town of Rayside-Balfour, the Town of Valley East and the Town of Walden that Ontario Hydro served immediately before the coming into force of this Part.

Where  
Ontario  
Hydro to  
distribute  
and supply  
power

(2) The duty of Ontario Hydro under subsection (1) to distribute and supply power in an area municipality is terminat-

Termination  
of duty to  
distribute  
and supply  
power

ed, on the date specified in the by-law, by a by-law passed with the consent of Ontario Hydro by the council of the area municipality under subsection 26d (1) or clause 26e (1) (a).

Assets and  
employees

(3) Sections 26h, 26i and 26l do not apply in respect of the assets and employees of Ontario Hydro in an area municipality until the passing of the by-law referred to in subsection (2).

Transfer of  
assets and  
liabilities

**26g.** On the 1st day of January, 1985, all assets under the control and management of and all liabilities of the municipal commissions in each of the Town of Capreol and the Town of Nickel Centre are, without compensation, assets under the control and management of and liabilities of the new commission established in respect of the area municipality.

Purchase  
of retail  
distribution  
facilities  
from  
Ontario  
Hydro

**26h.**—(1) On or before the date on which a commission is required by by-law under section 26d or 26e to commence to distribute and supply power, the commission shall purchase on behalf of the area municipality served by the commission, and Ontario Hydro shall sell to the commission, the assets and liabilities of Ontario Hydro that pertain to the distribution and supply of power at retail in the area municipality.

Leased  
equipment

(2) The purchases mentioned in subsection (1) shall include equipment leased by Ontario Hydro to retail customers in the area municipalities for the use of power supplied to the retail customers.

Purchase  
price

(3) The purchase price shall be determined in accordance with the regulations and shall be equal to the original cost of the assets less the sum of,

- (a) the accumulated net retail equity of the customers supplied with power through the assets; and
- (b) the accumulated depreciation associated with the assets.

Where price  
to be  
determined  
by arbitration

**26i.**—(1) If the purchase price for the assets and liabilities of Ontario Hydro that pertain to the distribution and supply of power at retail in an area municipality is not determined within one year after the date on which the commission serving the area municipality is required by by-law under this Part to commence to distribute and supply power in the area municipality, the commission or Ontario Hydro at any time thereafter may request that the purchase price be determined by a single arbitrator agreed on by the commission and Ontario Hydro.



(2) The *Arbitrations Act* applies where a request is made under subsection (1).

Application  
of  
R.S.O. 1980,  
c. 25

**26j.**—(1) All real property transferred by this Part to the control and management of a new commission or otherwise acquired by or for the new commission shall be held by the new commission in trust for the area municipality served by the new commission.

Vesting  
of real  
property

(2) Where a new commission is of the opinion, and so declares by resolution, that any real property under its control and management is not required for its purposes, unless otherwise agreed upon by the new commission and the area municipality served by the new commission, the real property may be disposed of as follows:

Disposition  
of real  
property

1. In the event that the area municipality served by the new commission wishes in good faith to use the real property for a municipal purpose, it shall compensate the new commission for the real property at its actual cost, less accrued depreciation as shown on the books of the new commission or the assessed value of the real property, whichever is the greater, and when the municipality in good faith no longer wishes to use the real property for a municipal purpose, the area municipality may sell, lease or otherwise dispose of the real property without the assent of Ontario Hydro and may retain the proceeds of the sale, lease or disposition as municipal funds.
2. In the event that the municipality served by the new commission does not wish to use the real property in accordance with paragraph 1, the new commission shall, as soon as practicable, sell, lease or otherwise dispose of the real property at fair market value on behalf of the municipality and the net proceeds derived from the sale, lease or other disposition of the real property or the compensation paid therefor under this subsection shall be received by the new commission and shall be applied in accordance with the *Public Utilities Act*.

R.S.O. 1980,  
c. 423

**26k.** Except as otherwise provided in this Part, sections 80 to 102 apply with necessary modifications to any borrowing for the purposes of a new commission.

Borrowing

**26l.**—(1) In this section, “transfer date”, in relation to an employee of a municipal commission or Ontario Hydro, means the date on which a commission established by or

Interpretation



under this Part assumes liability for payment of the wages or salary of the employee.

Transfer of  
employees

(2) On or before the 31st day of December, 1984, each municipal commission that supplied power in the Town of Capreol or the Town of Nickel Centre immediately before the coming into force of this Part shall designate those current employees of the municipal commission employed by the municipal commission in the distribution and supply of power for at least twelve months, and each new commission shall offer employment to the employees designated in respect of the area municipality served by the new commission.

Ontario  
Hydro

(3) On or before the date specified in a by-law mentioned in subsection 26f (2), Ontario Hydro shall designate those of its current employees employed in the distribution and supply of power in the area municipality to which the by-law relates for at least twelve months, and the new commission to which the by-law relates shall offer employment to the employees so designated.

Wages or  
salaries

(4) A person who accepts employment under this section is entitled to receive, for a period of one year commencing on the transfer date, a wage or salary not less than the wage or salary the person was receiving on the day nine months before the transfer date.

Partici-  
pation in  
O.M.E.R.S.

(5) Each new commission shall be deemed to have elected to participate in the Ontario Municipal Employees Retirement System on the day this Part comes into force, and a person who accepts employment under this section shall be deemed to continue or to become a member of the System, as the case requires, on the person's transfer date, and the *Ontario Municipal Employees Retirement System Act* applies to the person as a member of the System.

R.S.O. 1980,  
c. 348

Supple-  
mentary  
agreements

(6) When a person who accepts employment under this section with a new commission is entitled immediately before the person's transfer date to the benefit of a supplementary agreement between the Ontario Municipal Employees Retirement Board and the municipal commission that designated the person under subsection (2), the new commission shall assume, in respect of the person, all rights and obligations under the supplementary agreement as if the new commission had been a party to the agreement in the place of the municipal commission.

Transfer of  
pension  
credits  
from Ontario  
Hydro Plan

(7) Where a person who accepts employment under this section is a contributor to The Pension and Insurance Fund of Ontario Hydro immediately before the person's transfer date,

the present value of the pension earned by the person in The Pension and Insurance Fund of Ontario Hydro at the transfer date or the contributions of the person in the Fund with interest accumulated and credited to the person in the Fund, whichever is the greater, shall be transferred to the Ontario Municipal Employees Retirement Fund and the person shall be given credit in the Ontario Municipal Employees Retirement System for a period of service equal to the period of service for which he was given credit in The Ontario Hydro Pension and Insurance Plan.

(8) Notwithstanding subsection (5), a person who accepts employment under this section with a new commission and who, Pension guaranteee

- (a) was employed by Ontario Hydro immediately before the person's transfer date; and
- (b) continues in the employment of a municipal hydro-electric commission until the person or the beneficiary of the person becomes entitled to a pension benefit,

is entitled to at least the pension benefit the person would have been entitled to under The Ontario Hydro Pension and Insurance Plan if the person's years of continuous service with the commission had been additional years of continuous service with Ontario Hydro and if there had been no change in the Plan after the transfer date, calculated on the basis of the wage or salary paid to the person by Ontario Hydro and the commission, and the cost, if any, of the pension benefit over the cost of the pension benefit to which the person is entitled under subsection (5) shall be apportioned and paid by the body and in the manner provided by the regulations.

(9) A person who accepts employment under this section is entitled as a term of the person's employment to continue as a member of the group life insurance plan in which the person was a member with the person's former employer until the effective date of a common group life insurance plan covering all eligible employees of the person's new employer. Group life insurance

(10) On or before the 31st day of December, 1985, each new commission shall provide a common group life insurance plan covering all of the eligible employees of the new commission, and the plan shall provide to any person accepting employment under this section, by option or otherwise, insurance coverage not inferior to the insurance coverage to which the person was entitled immediately before the person's transfer date. Idem

## Sick leave

(11) A person who accepts employment under this section shall continue to enjoy the rights and benefits of sick leave entitlements or sick leave insurance provided by the former employer of the person immediately before the person's transfer date until the new employer establishes a sick leave entitlement plan or sick leave insurance plan, and thereupon the person shall receive allowance or credit for any accrued sick leave rights or benefits.

## Life insurance provided to pensioners

(12) Each new commission shall continue the provision of life insurance to pensioners formerly employed by a municipal commission in the distribution and supply of power in the area municipality served by the new commission.

## Termination for cause

(13) Nothing in this section prevents an employer from terminating the employment of an employee for cause.

## Special circumstances

(14) Where, in the opinion of the Minister, a person who is designated or who accepts employment under this section experiences any difficulty or hardship with regard to life insurance benefits, pension rights, pension benefits or sick leave rights or benefits, the Minister by order may do anything necessary to remedy or alleviate such difficulty or hardship.

## Dissolution of existing commissions

**26m.**—(1) For the purposes of section 120, the 1st day of January, 1985 is the date determined by the Minister in respect of all areas within the Regional Area and on that date the municipal commissions supplying only electrical power and energy in all areas within the Regional Area immediately before the coming into force of this Part are dissolved and any by-laws establishing them passed under sections 37 and 39 of the *Public Utilities Act* shall be deemed to be repealed and the assent of the municipal electors is not required.

R.S.O. 1980,  
c. 423

## Exception

(2) Subsection (1) does not apply to the City of Sudbury or to the Sudbury Hydro-Electric Commission.

## Regulations

**26n.** The Lieutenant Governor in Council may make regulations,

(a) for the purpose of subsection 26h (3) in respect of,

(i) the method of determining the original cost of the assets or of any asset or of any part of any asset,

(ii) the allocation of the original cost of the assets or of any asset or of any part of any asset,

- (iii) the method of determining the amount of any component of the accumulated net retail equity,
  - (iv) the allocation of the accumulated net retail equity or any component of the accumulated net retail equity,
  - (v) the method of calculating accumulated depreciation of any component of accumulated depreciation,
  - (vi) the allocation of accumulated depreciation or any component of accumulated depreciation,
  - (vii) the method of payment of the price of the assets;
- (b) for the purposes of subsection 26l (7) in respect of the apportionment and payment of the excess cost of any benefit referred to in the subsection.

**2. This Act comes into force on the day it receives Royal Assent.** Commence-  
ment

**3. The short title of this Act is the *Regional Municipality of Sudbury Amendment Act, 1984*.** Short title





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Government  
Publication

**Bill 91**



**An Act to amend the  
Regional Municipality of Sudbury Act**

**The Hon. C. Bennett**  
*Minister of Municipal Affairs and Housing*

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<i>1st Reading</i>	May 31st, 1984
<i>2nd Reading</i>	November 1st, 1984
<i>3rd Reading</i>	
<i>Royal Assent</i>	

*(Reprinted as amended by the Committee of the Whole House)*

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## EXPLANATORY NOTES

The Bill establishes new hydro-electric commissions for the municipalities of Capreol and Nickel Centre.

The members of each commission will be the mayor of the area municipality and additional members qualified as municipal electors in the municipality.

The council of each area municipality will determine whether, for terms after the first term, the members of its commission should be elected or appointed.

Customers in Capreol and Nickel Centre now supplied with power by Ontario Hydro will continue to be supplied by Ontario Hydro until the council of the area municipality, with the consent of Ontario Hydro, directs the new commission to supply power in all areas of the municipality.

Customers in Onaping Falls, Rayside-Balfour, Valley East and Walden will continue to be supplied by Ontario Hydro until the council of the area municipality, with the consent of Ontario Hydro, establishes a commission to supply power in all areas of the municipality.

In the interim, the councils of Capreol, Nickel Centre, Onaping Falls, Rayside-Balfour, Valley East and Walden are required to review the supply of power at least once in every five years.

Existing arrangements pursuant to which certain areas of Nickel Centre, Onaping Falls and Walden are currently being supplied power by privately owned corporations are not affected by this Bill.

Provision is made for the transfer of employees in certain circumstances and for the protection of their salaries and benefits.

Bill 91

1984

**An Act to amend the  
Regional Municipality of Sudbury Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** The *Regional Municipality of Sudbury Act*, being chapter 441 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following Part:

PART IV-A

HYDRO-ELECTRIC SERVICES

**26a.** In this Part,

Interpretation

- (a) "accumulated net retail equity" means the portion of equity accumulated through debt retirement appropriations recorded for the Rural Power District relating to Ontario Hydro's rural retail system plus the portion of the balance recorded for customers in the Stabilization of Rates and Contingencies Account, in the books of Ontario Hydro;
- (b) "municipal commission" means a hydro-electric commission or public utilities commission, other than the Sudbury Hydro-Electric Commission, entrusted with the control and management of works for the retail distribution and supply of power in the Regional Area immediately before the coming into force of this Part and established or deemed to be established under Part III of the *Public Utilities Act*;
- (c) "new commission" means a commission established by section 26b;
- (d) "power" means electrical power and includes electrical energy;

R.S.O. 1980,  
c. 423

(e) "regulations" means the regulations made under this Part;

(f) "retail", when used in relation to the distribution and supply of power, refers to the distribution and supply of power at voltages less than 50 kilovolts, but does not refer to works located within a transformer station that transform power from voltages greater than 50 kilovolts to voltages less than 50 kilovolts.

Commissions  
established

**26b.**—(1) On the day this Part comes into force, a hydro-electric commission for each of the towns of Capreol and Nickel Centre is hereby established.

Application  
of  
R.S.O. 1980,  
cc. 423, 384

(2) Each commission established by subsection (1) shall be deemed to be a commission established under Part III of the *Public Utilities Act* and a municipal commission within the meaning of the *Power Corporation Act*.

Names of  
commissions

(3) Each commission established by subsection (1) shall be known by the name set out below that relates to the area municipality in respect of which the commission is established:

1. Capreol Hydro-Electric Commission.
2. Nickel Centre Hydro-Electric Commission.

Composition

(4) Each commission established by subsection (1) shall consist of the mayor of the area municipality in respect of which the commission is established and additional members who are qualified electors under the *Municipal Elections Act* in the area municipality and who are served by a new commission on the date of their election or appointment to the new commission.

R.S.O. 1980,  
c. 308

When area  
municipality  
may  
determine  
size of  
commission

(5) Except as otherwise provided in this Part, the council of each area municipality shall determine by by-law whether the number of additional members of the commission established by subsection (1) in respect of the area municipality shall be two or four.

First  
commission,  
Capreol

(6) For the term expiring with the 30th day of November, 1985, the Capreol Hydro-Electric Commission established by subsection (1) shall consist of the mayor of the Town of Capreol and two additional members residing in the Town of Capreol, who were members of the Capreol Hydro-Electric Commission as it existed immediately before the coming into force of this Part, who shall be appointed by the council of the Town.

(7) For the term expiring with the 30th day of November, 1985, the Nickel Centre Hydro-Electric Commission established by subsection (1) shall consist of the mayor of the Town of Nickel Centre and two additional members residing in the Town of Nickel Centre, who were members of the Coniston Hydro-Electric Commission as it existed immediately before the coming into force of this Part, who shall be appointed by the council of the Town.

First  
commission,  
Nickel  
Centre

(8) Where this section provides that one or more members of a municipal commission are to be additional members for a term specified by this section and the number of such members who meet the qualifications in subsection (4) is less than the required number of additional members, the council of the area municipality in respect of which the commission was established under subsection (1) shall appoint an additional member or additional members so that there will be the required number of additional members of the new commission.

Additional  
members of  
first  
commissions

(9) For terms commencing after the 30th day of November, 1985, the additional members of each new commission shall be elected by a general vote of the electors of the area municipality served by the commission, unless before the 1st day of July, 1985 the council of the area municipality provides by by-law that the additional members shall be elected by a general vote of those electors of the area municipality who reside within or are owners or tenants of land within the area served by the commission or that the additional members shall be appointed by the council.

Additional  
members of  
subsequent  
commissions

(10) Members of the council of the area municipality served by a new commission may be members of the new commission, but the members of the council shall not form a majority of the new commission.

Eligibility  
of members  
of council

(11) Subject to subsections (6) and (7), a member of a new commission shall hold office for the same term as the members of council or until his successor is elected or appointed.

Term of  
office

(12) The council of an area municipality served by a new commission may, by by-law passed with the written consent of the mayor, appoint a delegate from among the members of the council to represent the mayor on the commission.

Delegates

(13) The salaries of the members of the new commissions for the term expiring with the 30th day of November, 1985 shall be fixed on or before the 1st day of January, 1985 in an amount that does not exceed the highest salary paid to mem-

Salary  
of first  
commissions



bers of the municipal commissions operating in the Regional Area on the 1st day of July, 1984.

Resignations (14) A resignation from the council of an area municipality of a member of the council who is a member of a new commission shall be deemed to be a resignation from both the council and the new commission.



Interpretation **26c.**—(1) In this section, “Town” means the municipality or corporation of the Town of Onaping Falls or the Town of Walden, as the case requires.

Commission to serve part of Town (2) Where the Town purchases the assets used by a person to supply power in an area of the Town, the council of the Town shall establish by by-law the commission for the Town provided for in section 26e.

Area to be served (3) The commission mentioned in subsection (2) shall distribute and supply power only in the area of the Town supplied with power by the person from whom the Town purchased the assets.


Commencement (4) The commission shall commence to distribute and supply power in the area on the date that shall be specified by the council in the by-law.

Consent (5) A by-law under subsection (2) does not require the consent of Ontario Hydro.

Extension of area (6) Where the council of the Town establishes the commission mentioned in subsection (2), subsections 26f (1) and (2) apply with necessary modifications to the Town and to the commission and, for the purpose,

(a) a reference to the council shall be deemed to be a reference to the council of the Town;

(b) a reference to the new commission shall be deemed to be a reference to the commission mentioned in subsection (2); and

(c) a reference to the area municipality shall be deemed to be a reference to the Town. 

Powers of commissions

R.S.O. 1980, c. 423

**26d.**—(1) Except as herein provided, all the powers, rights, authorities and privileges that are conferred by the *Public Utilities Act* on a municipal corporation with respect to power shall, on and after the 1st day of January, 1985, be exercised on behalf of each area municipality by the new com-

mission established in respect of the area municipality and not by the council of any municipality or any other person.

(2) On and after the 1st day of January, 1985, each new commission has the sole right to distribute and supply power within the area municipality in respect of which the new commission is established.

Right to distribute and supply power

(3) The right of a new commission to distribute and supply power,

Exception to right to distribute and supply power

(a) is subject to any subsisting contracts for the supply of power made under section 69 of the *Power Corporation Act*; and

R.S.O. 1980, c. 384

(b) is subject to the rights of Ontario Hydro or any other person or body other than a municipal commission that is supplying power in the area served by the new commission on the 31st day of December, 1984.

(4) A new commission may contract with Ontario Hydro without electoral assent or other approval or authorization for the transmission and supply to the new commission of power to be distributed and sold in the area municipality served by the new commission.

Contract with Ontario Hydro

(5) A contract under subsection (4) shall be deemed to be an agreement within the meaning of clause 149 (2) (s) of the *Municipal Act*.

Idem

R.S.O. 1980, c. 302

(6) Except where inconsistent with the provisions of this Act, the provisions of the *Power Corporation Act* applicable to a municipal corporation that has entered into a contract with Ontario Hydro for the distribution and supply of power to the municipal corporation apply to the new commissions.

Application of R.S.O. 1980, c. 384

(7) With the consent of a new commission, Ontario Hydro may distribute and supply power directly to customers in the area municipality in respect of which the new commission is established.

Direct customers

**26e.**—(1) The council of each of the Town of Onaping Falls, the Town of Rayside-Balfour, the Town of Valley East and the Town of Walden, with the consent of Ontario Hydro, may establish by by-law a hydro-electric commission for the town and, commencing on the date that the council shall specify in the by-law, the commission shall distribute and supply power in all of the town.

Establishment of commission by by-law in Onaping Falls, Rayside-Balfour, Valley East and Walden

Rights of  
existing  
suppliers

(2) The duty of a commission established under subsection (1) is subject to the rights of any person or body other than Ontario Hydro that is supplying power in the area served by the commission on the date that the commission commences to distribute and supply power.

Names of  
commissions

(3) A commission established under subsection (1) shall be known by the name set out below that relates to the area municipality in respect of which the commission is established:

1. Onaping Falls Hydro-Electric Commission.
2. Rayside-Balfour Hydro-Electric Commission.
3. Valley East Hydro-Electric Commission.
4. Walden Hydro-Electric Commission.

Composition

(4) A commission established under subsection (1),

R.S.O. 1980,  
cc. 423, 384

(a) shall be deemed to be a commission established under Part III of the *Public Utilities Act* and a municipal commission within the meaning of the *Power Corporation Act*; and

R.S.O. 1980,  
c. 308

(b) shall consist of the mayor of the area municipality in respect of which the commission is established and additional members who are qualified electors under the *Municipal Elections Act* in the area municipality.

First  
additional  
members

(5) The council of an area municipality in respect of which a commission is established under subsection (1) shall appoint the first additional members of the commission.

Subsequent  
additional  
members

(6) For terms after the first term, the additional members of a commission established under subsection (1) in respect of an area municipality shall be elected by a general vote of the electors of the area municipality unless, before the completion of the first term of office of the members of the commission, the council of the area municipality provides by by-law that the additional members shall be elected by a general vote of those electors of the area municipality who reside within or are owners or tenants of land within the area served by the commission or that the additional members shall be appointed by the council.

Application  
of other  
sections  
of Act

(7) Upon the establishment of a commission under subsection (1),

- (a) subsections 26b (5), (10), (11), (12) and (14), section 26d, subsection 26g (2) and sections 26i to 26m shall apply with necessary modifications and, for the purpose, the dates mentioned therein shall be deemed to be the dates that shall be specified in the by-law mentioned in subsection (1); and
  - (b) the commission, for the purposes of clause (a), shall be deemed to be a commission established by section 26b.
- (8) Until such time as the power conferred by subsection (1) has been exercised,
- Review of  
distribution  
and supply  
of power
- (a) the council of each of the Town of Onaping Falls, the Town of Rayside-Balfour, the Town of Valley East and the Town of Walden shall review the distribution and supply of power within the area municipality at least once in every five years, and shall determine by resolution whether or not it is financially feasible to exercise the power conferred by subsection (1); and
  - (b) where the council determines as provided in clause (a) that it is financially feasible, the council shall exercise the power conferred by subsection (1).
- 26f.**—(1) The council of each of the Town of Capreol and the Town of Nickel Centre, with the consent of Ontario Hydro and without the assent of the municipal electors, by by-law,
- Supply of  
power in  
all areas  
of municipa-  
lities of  
Capreol,  
Nickel  
Centre
- (a) may direct the new commission established in respect of the area municipality to commence on a day specified by the by-law the distribution and supply of power in all of the area municipality and on the specified day sections 26i and 26m shall apply with necessary modifications to the assets and employees of Ontario Hydro in the area municipality; or
  - (b) may dissolve the new commission established in respect of the area municipality on a day specified by the by-law and, on the specified day,
    - (i) all assets under the control and management of and all liabilities of the new commission, and all debentures issued in respect of the distribution and supply of power in the area



municipality are, without compensation, assets and liabilities of Ontario Hydro, and

- (ii) Ontario Hydro shall commence to distribute and supply power in all of the area municipality.

Review of  
distribution  
and supply  
of power

- (2) Until such time as the power conferred by subsection (1) has been exercised,

- (a) the council of each of the Town of Capreol and the Town of Nickel Centre shall review the distribution and supply of power within their respective municipalities at least once in every five years and shall determine by resolution whether or not it is financially feasible to exercise the power conferred by clause (1) (a); and
- (b) where the council of the Town of Capreol or the Town of Nickel Centre determines as provided in clause (a) that it is financially feasible for the new commission established in respect of the municipality to distribute and supply power in the entire municipality, the council, subject to the approval of Ontario Hydro, shall exercise the power conferred by clause (1) (a).

Rights of  
existing  
suppliers

- (3) The duty of a new commission under subsection (1) is subject to the rights of any person or body other than Ontario Hydro or a municipal commission that is supplying power in the Town of Nickel Centre on the day immediately before the day specified by the by-law mentioned in subsection (1).

Where  
Ontario  
Hydro to  
distribute  
and supply  
power

**26g.**—(1) Ontario Hydro shall continue to distribute and supply power in those areas of the Town of Capreol, the Town of Nickel Centre, the Town of Onaping Falls, the Town of Rayside-Balfour, the Town of Valley East and the Town of Walden that Ontario Hydro served immediately before the coming into force of this Part.

Termination  
of duty to  
distribute  
and supply  
power

- (2) The duty of Ontario Hydro under subsection (1) to distribute and supply power in an area municipality is terminated, on the date specified in the by-law, by a by-law passed with the consent of Ontario Hydro by the council of the area municipality under subsection 26e (1) or clause 26f (1) (a).

Assets and  
employees

- (3) Sections 26i, 26j and 26m do not apply in respect of the assets and employees of Ontario Hydro in an area municipality until the passing of the by-law referred to in subsection (2).



**26h.** On the 1st day of January, 1985, all assets under the control and management of and all liabilities of the municipal commissions in each of the Town of Capreol and the Town of Nickel Centre are, without compensation, assets under the control and management of and liabilities of the new commission established in respect of the area municipality.

Transfer of  
assets and  
liabilities

**26i.**—(1) On or before the date on which a commission is required by by-law under section 26e or 26f to commence to distribute and supply power, the commission shall purchase on behalf of the area municipality served by the commission, and Ontario Hydro shall sell to the commission, the assets and liabilities of Ontario Hydro that pertain to the distribution and supply of power at retail in the area municipality.

Purchase  
of retail  
distribution  
facilities  
from  
Ontario  
Hydro

(2) The purchases mentioned in subsection (1) shall include equipment leased by Ontario Hydro to retail customers in the area municipalities for the use of power supplied to the retail customers.

Leased  
equipment

(3) The purchase price shall be determined in accordance with the regulations and shall be equal to the original cost of the assets less the sum of,

Purchase  
price

(a) the accumulated net retail equity of the customers supplied with power through the assets; and

(b) the accumulated depreciation associated with the assets.

**26j.**—(1) If the purchase price for the assets and liabilities of Ontario Hydro that pertain to the distribution and supply of power at retail in an area municipality is not determined within one year after the date on which the commission serving the area municipality is required by by-law under this Part to commence to distribute and supply power in the area municipality, the commission or Ontario Hydro at any time thereafter may request that the purchase price be determined by a single arbitrator agreed on by the commission and Ontario Hydro.

Where price  
to be  
determined  
by arbitration

(2) The *Arbitrations Act* applies where a request is made under subsection (1).

Application  
of  
R.S.O. 1980,  
c. 25

**26k.**—(1) All real property transferred by this Part to the control and management of a new commission or otherwise acquired by or for the new commission shall be held by the new commission in trust for the area municipality served by the new commission.

Vesting  
of real  
property

Disposition  
of real  
property

(2) Where a new commission is of the opinion, and so declares by resolution, that any real property under its control and management is not required for its purposes, unless otherwise agreed upon by the new commission and the area municipality served by the new commission, the real property may be disposed of as follows:

1. In the event that the area municipality served by the new commission wishes in good faith to use the real property for a municipal purpose, it shall compensate the new commission for the real property at its actual cost, less accrued depreciation as shown on the books of the new commission or the assessed value of the real property, whichever is the greater, and when the municipality in good faith no longer wishes to use the real property for a municipal purpose, the area municipality may sell, lease or otherwise dispose of the real property without the assent of Ontario Hydro and may retain the proceeds of the sale, lease or disposition as municipal funds.
2. In the event that the municipality served by the new commission does not wish to use the real property in accordance with paragraph 1, the new commission shall, as soon as practicable, sell, lease or otherwise dispose of the real property at fair market value on behalf of the municipality and the net proceeds derived from the sale, lease or other disposition of the real property or the compensation paid therefor under this subsection shall be received by the new commission and shall be applied in accordance with the *Public Utilities Act*.

R.S.O. 1980,  
c. 423

Borrowing

**261.** Except as otherwise provided in this Part, sections 80 to 102 apply with necessary modifications to any borrowing for the purposes of a new commission.

Interpretation

**26m.**—(1) In this section, “transfer date”, in relation to an employee of a municipal commission or Ontario Hydro, means the date on which a commission established by or under this Part assumes liability for payment of the wages or salary of the employee.

Transfer of  
employees

(2) On or before the 31st day of December, 1984, each municipal commission that supplied power in the Town of Capreol or the Town of Nickel Centre immediately before the coming into force of this Part shall designate those current employees of the municipal commission employed by the municipal commission in the distribution and supply of power for at least twelve months, and each new commission shall

offer employment to the employees designated in respect of the area municipality served by the new commission.

(3) On or before the date specified in a by-law mentioned in subsection 26g (2), Ontario Hydro shall designate those of its current employees employed in the distribution and supply of power in the area municipality to which the by-law relates for at least twelve months, and the new commission to which the by-law relates shall offer employment to the employees so designated.

Ontario  
Hydro

(4) A person who accepts employment under this section is entitled to receive, for a period of one year commencing on the transfer date, a wage or salary not less than the wage or salary the person was receiving on the day nine months before the transfer date.

Wages or  
salaries

(5) Each new commission shall be deemed to have elected to participate in the Ontario Municipal Employees Retirement System on the day this Part comes into force, and a person who accepts employment under this section shall be deemed to continue or to become a member of the System, as the case requires, on the person's transfer date, and the *Ontario Municipal Employees Retirement System Act* applies to the person as a member of the System.

Partici-  
pation in  
O.M.E.R.S.

R.S.O. 1980,  
c. 348

(6) When a person who accepts employment under this section with a new commission is entitled immediately before the person's transfer date to the benefit of a supplementary agreement between the Ontario Municipal Employees Retirement Board and the municipal commission that designated the person under subsection (2), the new commission shall assume, in respect of the person, all rights and obligations under the supplementary agreement as if the new commission had been a party to the agreement in the place of the municipal commission.

Supple-  
mentary  
agreements

(7) Where a person who accepts employment under this section is a contributor to The Pension and Insurance Fund of Ontario Hydro immediately before the person's transfer date, the present value of the pension earned by the person in The Pension and Insurance Fund of Ontario Hydro at the transfer date or the contributions of the person in the Fund with interest accumulated and credited to the person in the Fund, whichever is the greater, shall be transferred to the Ontario Municipal Employees Retirement Fund and the person shall be given credit in the Ontario Municipal Employees Retirement System for a period of service equal to the period of service for which he was given credit in The Ontario Hydro Pension and Insurance Plan.

Transfer of  
pension  
credits  
from Ontario  
Hydro Plan



Pension  
guarantee

(8) Notwithstanding subsection (5), a person who accepts employment under this section with a new commission and who,

- (a) was employed by Ontario Hydro immediately before the person's transfer date; and
- (b) continues in the employment of a municipal hydro-electric commission until the person or the beneficiary of the person becomes entitled to a pension benefit,

is entitled to at least the pension benefit the person would have been entitled to under The Ontario Hydro Pension and Insurance Plan if the person's years of continuous service with the commission had been additional years of continuous service with Ontario Hydro and if there had been no change in the Plan after the transfer date, calculated on the basis of the wage or salary paid to the person by Ontario Hydro and the commission, and the cost, if any, of the pension benefit over the cost of the pension benefit to which the person is entitled under subsection (5) shall be apportioned and paid by the body and in the manner provided by the regulations.

Group life  
insurance

(9) A person who accepts employment under this section is entitled as a term of the person's employment to continue as a member of the group life insurance plan in which the person was a member with the person's former employer until the effective date of a common group life insurance plan covering all eligible employees of the person's new employer.

Idem

(10) On or before the 31st day of December, 1985, each new commission shall provide a common group life insurance plan covering all of the eligible employees of the new commission, and the plan shall provide to any person accepting employment under this section, by option or otherwise, insurance coverage not inferior to the insurance coverage to which the person was entitled immediately before the person's transfer date.

Sick leave

(11) A person who accepts employment under this section shall continue to enjoy the rights and benefits of sick leave entitlements or sick leave insurance provided by the former employer of the person immediately before the person's transfer date until the new employer establishes a sick leave entitlement plan or sick leave insurance plan, and thereupon the person shall receive allowance or credit for any accrued sick leave rights or benefits.

(12) Each new commission shall continue the provision of life insurance to pensioners formerly employed by a municipal commission in the distribution and supply of power in the area municipality served by the new commission.

Life insurance provided to pensioners

(13) Nothing in this section prevents an employer from terminating the employment of an employee for cause.

Termination for cause

(14) Where, in the opinion of the Minister, a person who is designated or who accepts employment under this section experiences any difficulty or hardship with regard to life insurance benefits, pension rights, pension benefits or sick leave rights or benefits, the Minister by order may do anything necessary to remedy or alleviate such difficulty or hardship.

Special circumstances

**26n.**—(1) For the purposes of section 120, the 1st day of January, 1985 is the date determined by the Minister in respect of all areas within the Regional Area and on that date the municipal commissions supplying only electrical power and energy in all areas within the Regional Area immediately before the coming into force of this Part are dissolved and any by-laws establishing them passed under sections 37 and 39 of the *Public Utilities Act* shall be deemed to be repealed and the assent of the municipal electors is not required.

Dissolution of existing commissions

R.S.O. 1980, c. 423

(2) Subsection (1) does not apply to the City of Sudbury or to the Sudbury Hydro-Electric Commission.

Exception

**26o.** The Lieutenant Governor in Council may make regulations,

Regulations

(a) for the purpose of subsection 26i (3) in respect of,

- (i) the method of determining the original cost of the assets or of any asset or of any part of any asset,
- (ii) the allocation of the original cost of the assets or of any asset or of any part of any asset,
- (iii) the method of determining the amount of any component of the accumulated net retail equity,
- (iv) the allocation of the accumulated net retail equity or any component of the accumulated net retail equity,



- (v) the method of calculating accumulated depreciation of any component of accumulated depreciation,
  - (vi) the allocation of accumulated depreciation or any component of accumulated depreciation,
  - (vii) the method of payment of the price of the assets;
- (b) for the purposes of subsection 26m (7) in respect of the apportionment and payment of the excess cost of any benefit referred to in the subsection.

Commence-  
ment

**2. This Act comes into force on the day it receives Royal Assent.**

Short title

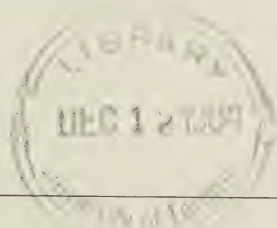
**3. The short title of this Act is the *Regional Municipality of Sudbury Amendment Act, 1984*.**

# Bill 91

(Chapter 47  
*Statutes of Ontario, 1984*)

## **An Act to amend the Regional Municipality of Sudbury Act**

The Hon. C. Bennett  
*Minister of Municipal Affairs and Housing*



<i>1st Reading</i>	May 31st, 1984
<i>2nd Reading</i>	November 1st, 1984
<i>3rd Reading</i>	November 23rd, 1984
<i>Royal Assent</i>	November 27th, 1984



Bill 91

1984

**An Act to amend the  
Regional Municipality of Sudbury Act**

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

**1.** The *Regional Municipality of Sudbury Act*, being chapter 441 of the Revised Statutes of Ontario, 1980, is amended by adding thereto the following Part:

PART IV-A

HYDRO-ELECTRIC SERVICES

**26a.** In this Part,

Interpretation

- (a) “accumulated net retail equity” means the portion of equity accumulated through debt retirement appropriations recorded for the Rural Power District relating to Ontario Hydro’s rural retail system plus the portion of the balance recorded for customers in the Stabilization of Rates and Contingencies Account, in the books of Ontario Hydro;
- (b) “municipal commission” means a hydro-electric commission or public utilities commission, other than the Sudbury Hydro-Electric Commission, entrusted with the control and management of works for the retail distribution and supply of power in the Regional Area immediately before the coming into force of this Part and established or deemed to be established under Part III of the *Public Utilities Act*;
- (c) “new commission” means a commission established by section 26b;
- (d) “power” means electrical power and includes electrical energy;

R.S.O. 1980,  
c. 423

- (e) “regulations” means the regulations made under this Part;
- (f) “retail”, when used in relation to the distribution and supply of power, refers to the distribution and supply of power at voltages less than 50 kilovolts, but does not refer to works located within a transformer station that transform power from voltages greater than 50 kilovolts to voltages less than 50 kilovolts.

Commissions  
established

**26b.**—(1) On the day this Part comes into force, a hydro-electric commission for each of the towns of Capreol and Nickel Centre is hereby established.

Application  
of  
R.S.O. 1980,  
cc. 423, 384

(2) Each commission established by subsection (1) shall be deemed to be a commission established under Part III of the *Public Utilities Act* and a municipal commission within the meaning of the *Power Corporation Act*.

Names of  
commissions

(3) Each commission established by subsection (1) shall be known by the name set out below that relates to the area municipality in respect of which the commission is established:

1. Capreol Hydro-Electric Commission.
2. Nickel Centre Hydro-Electric Commission.

Composition

R.S.O. 1980,  
c. 308

(4) Each commission established by subsection (1) shall consist of the mayor of the area municipality in respect of which the commission is established and additional members who are qualified electors under the *Municipal Elections Act* in the area municipality and who are served by a new commission on the date of their election or appointment to the new commission.

When area  
municipality  
may  
determine  
size of  
commission

(5) Except as otherwise provided in this Part, the council of each area municipality shall determine by by-law whether the number of additional members of the commission established by subsection (1) in respect of the area municipality shall be two or four.

First  
commission,  
Capreol

(6) For the term expiring with the 30th day of November, 1985, the Capreol Hydro-Electric Commission established by subsection (1) shall consist of the mayor of the Town of Capreol and two additional members residing in the Town of Capreol, who were members of the Capreol Hydro-Electric Commission as it existed immediately before the coming into force of this Part, who shall be appointed by the council of the Town.



(7) For the term expiring with the 30th day of November, 1985, the Nickel Centre Hydro-Electric Commission established by subsection (1) shall consist of the mayor of the Town of Nickel Centre and two additional members residing in the Town of Nickel Centre, who were members of the Coniston Hydro-Electric Commission as it existed immediately before the coming into force of this Part, who shall be appointed by the council of the Town.

First  
commission,  
Nickel  
Centre

(8) Where this section provides that one or more members of a municipal commission are to be additional members for a term specified by this section and the number of such members who meet the qualifications in subsection (4) is less than the required number of additional members, the council of the area municipality in respect of which the commission was established under subsection (1) shall appoint an additional member or additional members so that there will be the required number of additional members of the new commission.

Additional  
members of  
first  
commissions

(9) For terms commencing after the 30th day of November, 1985, the additional members of each new commission shall be elected by a general vote of the electors of the area municipality served by the commission, unless before the 1st day of July, 1985 the council of the area municipality provides by by-law that the additional members shall be elected by a general vote of those electors of the area municipality who reside within or are owners or tenants of land within the area served by the commission or that the additional members shall be appointed by the council.

Additional  
members of  
subsequent  
commissions

(10) Members of the council of the area municipality served by a new commission may be members of the new commission, but the members of the council shall not form a majority of the new commission.

Eligibility  
of members  
of council

(11) Subject to subsections (6) and (7), a member of a new commission shall hold office for the same term as the members of council or until his successor is elected or appointed.

Term of  
office

(12) The council of an area municipality served by a new commission may, by by-law passed with the written consent of the mayor, appoint a delegate from among the members of the council to represent the mayor on the commission.

Delegates

(13) The salaries of the members of the new commissions for the term expiring with the 30th day of November, 1985 shall be fixed on or before the 1st day of January, 1985 in an amount that does not exceed the highest salary paid to mem-

Salary  
of first  
commissions

bers of the municipal commissions operating in the Regional Area on the 1st day of July, 1984.

Resignations (14) A resignation from the council of an area municipality of a member of the council who is a member of a new commission shall be deemed to be a resignation from both the council and the new commission.

Interpretation **26c.**—(1) In this section, “Town” means the municipality or corporation of the Town of Onaping Falls or the Town of Walden, as the case requires.

Commission to serve part of Town (2) Where the Town purchases the assets used by a person to supply power in an area of the Town, the council of the Town shall establish by by-law the commission for the Town provided for in section 26e.

Area to be served (3) The commission mentioned in subsection (2) shall distribute and supply power only in the area of the Town supplied with power by the person from whom the Town purchased the assets.

Commencement (4) The commission shall commence to distribute and supply power in the area on the date that shall be specified by the council in the by-law.

Consent (5) A by-law under subsection (2) does not require the consent of Ontario Hydro.

Extension of area (6) Where the council of the Town establishes the commission mentioned in subsection (2), subsections 26f (1) and (2) apply with necessary modifications to the Town and to the commission and, for the purpose,

(a) a reference to the council shall be deemed to be a reference to the council of the Town;

(b) a reference to the new commission shall be deemed to be a reference to the commission mentioned in subsection (2); and

(c) a reference to the area municipality shall be deemed to be a reference to the Town.

Powers of commissions

R.S.O. 1980,  
c. 423

**26d.**—(1) Except as herein provided, all the powers, rights, authorities and privileges that are conferred by the *Public Utilities Act* on a municipal corporation with respect to power shall, on and after the 1st day of January, 1985, be exercised on behalf of each area municipality by the new com-

mission established in respect of the area municipality and not by the council of any municipality or any other person.

(2) On and after the 1st day of January, 1985, each new commission has the sole right to distribute and supply power within the area municipality in respect of which the new commission is established.

Right to distribute and supply power

(3) The right of a new commission to distribute and supply power,

Exception to right to distribute and supply power

(a) is subject to any subsisting contracts for the supply of power made under section 69 of the *Power Corporation Act*; and

R.S.O. 1980, c. 384

(b) is subject to the rights of Ontario Hydro or any other person or body other than a municipal commission that is supplying power in the area served by the new commission on the 31st day of December, 1984.

(4) A new commission may contract with Ontario Hydro without electoral assent or other approval or authorization for the transmission and supply to the new commission of power to be distributed and sold in the area municipality served by the new commission.

Contract with Ontario Hydro

(5) A contract under subsection (4) shall be deemed to be an agreement within the meaning of clause 149 (2) (s) of the *Municipal Act*.

Idem

R.S.O. 1980, c. 302

(6) Except where inconsistent with the provisions of this Act, the provisions of the *Power Corporation Act* applicable to a municipal corporation that has entered into a contract with Ontario Hydro for the distribution and supply of power to the municipal corporation apply to the new commissions.

Application of R.S.O. 1980, c. 384

(7) With the consent of a new commission, Ontario Hydro may distribute and supply power directly to customers in the area municipality in respect of which the new commission is established.

Direct customers

**26e.**—(1) The council of each of the Town of Onaping Falls, the Town of Rayside-Balfour, the Town of Valley East and the Town of Walden, with the consent of Ontario Hydro, may establish by by-law a hydro-electric commission for the town and, commencing on the date that the council shall specify in the by-law, the commission shall distribute and supply power in all of the town.

Establishment of commission by by-law in Onaping Falls, Rayside-Balfour, Valley East and Walden

Rights of  
existing  
suppliers

(2) The duty of a commission established under subsection (1) is subject to the rights of any person or body other than Ontario Hydro that is supplying power in the area served by the commission on the date that the commission commences to distribute and supply power.

Names of  
commissions

(3) A commission established under subsection (1) shall be known by the name set out below that relates to the area municipality in respect of which the commission is established:

1. Onaping Falls Hydro-Electric Commission.
2. Rayside-Balfour Hydro-Electric Commission.
3. Valley East Hydro-Electric Commission.
4. Walden Hydro-Electric Commission.

Composition

(4) A commission established under subsection (1),

R.S.O. 1980,  
cc. 423, 384

(a) shall be deemed to be a commission established under Part III of the *Public Utilities Act* and a municipal commission within the meaning of the *Power Corporation Act*; and

R.S.O. 1980,  
c. 308

(b) shall consist of the mayor of the area municipality in respect of which the commission is established and additional members who are qualified electors under the *Municipal Elections Act* in the area municipality.

First  
additional  
members

(5) The council of an area municipality in respect of which a commission is established under subsection (1) shall appoint the first additional members of the commission.

Subsequent  
additional  
members

(6) For terms after the first term, the additional members of a commission established under subsection (1) in respect of an area municipality shall be elected by a general vote of the electors of the area municipality unless, before the completion of the first term of office of the members of the commission, the council of the area municipality provides by by-law that the additional members shall be elected by a general vote of those electors of the area municipality who reside within or are owners or tenants of land within the area served by the commission or that the additional members shall be appointed by the council.

Application  
of other  
sections  
of Act

(7) Upon the establishment of a commission under subsection (1),



- (a) subsections 26b (5), (10), (11), (12) and (14), section 26d, subsection 26g (2) and sections 26i to 26m shall apply with necessary modifications and, for the purpose, the dates mentioned therein shall be deemed to be the dates that shall be specified in the by-law mentioned in subsection (1); and
  - (b) the commission, for the purposes of clause (a), shall be deemed to be a commission established by section 26b.
- (8) Until such time as the power conferred by subsection (1) has been exercised,
- (a) the council of each of the Town of Onaping Falls, the Town of Rayside-Balfour, the Town of Valley East and the Town of Walden shall review the distribution and supply of power within the area municipality at least once in every five years, and shall determine by resolution whether or not it is financially feasible to exercise the power conferred by subsection (1); and
  - (b) where the council determines as provided in clause (a) that it is financially feasible, the council shall exercise the power conferred by subsection (1).
- 26f.**—(1) The council of each of the Town of Capreol and the Town of Nickel Centre, with the consent of Ontario Hydro and without the assent of the municipal electors, by by-law,
- (a) may direct the new commission established in respect of the area municipality to commence on a day specified by the by-law the distribution and supply of power in all of the area municipality and on the specified day sections 26i and 26m shall apply with necessary modifications to the assets and employees of Ontario Hydro in the area municipality; or
  - (b) may dissolve the new commission established in respect of the area municipality on a day specified by the by-law and, on the specified day,
    - (i) all assets under the control and management of and all liabilities of the new commission, and all debentures issued in respect of the distribution and supply of power in the area

Review of  
distribution  
and supply  
of power

Supply of  
power in  
all areas  
of municipi-  
palities of  
Capreol,  
Nickel  
Centre



municipality are, without compensation, assets and liabilities of Ontario Hydro, and

- (ii) Ontario Hydro shall commence to distribute and supply power in all of the area municipality.

Review of  
distribution  
and supply  
of power

- (2) Until such time as the power conferred by subsection (1) has been exercised,

- (a) the council of each of the Town of Capreol and the Town of Nickel Centre shall review the distribution and supply of power within their respective municipalities at least once in every five years and shall determine by resolution whether or not it is financially feasible to exercise the power conferred by clause (1) (a); and
- (b) where the council of the Town of Capreol or the Town of Nickel Centre determines as provided in clause (a) that it is financially feasible for the new commission established in respect of the municipality to distribute and supply power in the entire municipality, the council, subject to the approval of Ontario Hydro, shall exercise the power conferred by clause (1) (a).

Rights of  
existing  
suppliers

- (3) The duty of a new commission under subsection (1) is subject to the rights of any person or body other than Ontario Hydro or a municipal commission that is supplying power in the Town of Nickel Centre on the day immediately before the day specified by the by-law mentioned in subsection (1).

Where  
Ontario  
Hydro to  
distribute  
and supply  
power

**26g.**—(1) Ontario Hydro shall continue to distribute and supply power in those areas of the Town of Capreol, the Town of Nickel Centre, the Town of Onaping Falls, the Town of Rayside-Balfour, the Town of Valley East and the Town of Walden that Ontario Hydro served immediately before the coming into force of this Part.

Termination  
of duty to  
distribute  
and supply  
power

- (2) The duty of Ontario Hydro under subsection (1) to distribute and supply power in an area municipality is terminated, on the date specified in the by-law, by a by-law passed with the consent of Ontario Hydro by the council of the area municipality under subsection 26e (1) or clause 26f (1) (a).

Assets and  
employees

- (3) Sections 26i, 26j and 26m do not apply in respect of the assets and employees of Ontario Hydro in an area municipality until the passing of the by-law referred to in subsection (2).

**26h.** On the 1st day of January, 1985, all assets under the control and management of and all liabilities of the municipal commissions in each of the Town of Capreol and the Town of Nickel Centre are, without compensation, assets under the control and management of and liabilities of the new commission established in respect of the area municipality.

Transfer of  
assets and  
liabilities

**26i.**—(1) On or before the date on which a commission is required by by-law under section 26e or 26f to commence to distribute and supply power, the commission shall purchase on behalf of the area municipality served by the commission, and Ontario Hydro shall sell to the commission, the assets and liabilities of Ontario Hydro that pertain to the distribution and supply of power at retail in the area municipality.

Purchase  
of retail  
distribution  
facilities  
from  
Ontario  
Hydro

(2) The purchases mentioned in subsection (1) shall include equipment leased by Ontario Hydro to retail customers in the area municipalities for the use of power supplied to the retail customers.

Leased  
equipment

(3) The purchase price shall be determined in accordance with the regulations and shall be equal to the original cost of the assets less the sum of,

Purchase  
price

(a) the accumulated net retail equity of the customers supplied with power through the assets; and

(b) the accumulated depreciation associated with the assets.

**26j.**—(1) If the purchase price for the assets and liabilities of Ontario Hydro that pertain to the distribution and supply of power at retail in an area municipality is not determined within one year after the date on which the commission serving the area municipality is required by by-law under this Part to commence to distribute and supply power in the area municipality, the commission or Ontario Hydro at any time thereafter may request that the purchase price be determined by a single arbitrator agreed on by the commission and Ontario Hydro.

Where price  
to be  
determined  
by arbitration

(2) The *Arbitrations Act* applies where a request is made under subsection (1).

Application  
of  
R.S.O. 1980,  
c. 25

**26k.**—(1) All real property transferred by this Part to the control and management of a new commission or otherwise acquired by or for the new commission shall be held by the new commission in trust for the area municipality served by the new commission.

Vesting  
of real  
property

Disposition  
of real  
property

(2) Where a new commission is of the opinion, and so declares by resolution, that any real property under its control and management is not required for its purposes, unless otherwise agreed upon by the new commission and the area municipality served by the new commission, the real property may be disposed of as follows:

1. In the event that the area municipality served by the new commission wishes in good faith to use the real property for a municipal purpose, it shall compensate the new commission for the real property at its actual cost, less accrued depreciation as shown on the books of the new commission or the assessed value of the real property, whichever is the greater, and when the municipality in good faith no longer wishes to use the real property for a municipal purpose, the area municipality may sell, lease or otherwise dispose of the real property without the assent of Ontario Hydro and may retain the proceeds of the sale, lease or disposition as municipal funds.
2. In the event that the municipality served by the new commission does not wish to use the real property in accordance with paragraph 1, the new commission shall, as soon as practicable, sell, lease or otherwise dispose of the real property at fair market value on behalf of the municipality and the net proceeds derived from the sale, lease or other disposition of the real property or the compensation paid therefor under this subsection shall be received by the new commission and shall be applied in accordance with the *Public Utilities Act*.

R.S.O. 1980,  
c. 423

Borrowing

**261.** Except as otherwise provided in this Part, sections 80 to 102 apply with necessary modifications to any borrowing for the purposes of a new commission.

Interpretation

**26m.**—(1) In this section, “transfer date”, in relation to an employee of a municipal commission or Ontario Hydro, means the date on which a commission established by or under this Part assumes liability for payment of the wages or salary of the employee.

Transfer of  
employees

(2) On or before the 31st day of December, 1984, each municipal commission that supplied power in the Town of Capreol or the Town of Nickel Centre immediately before the coming into force of this Part shall designate those current employees of the municipal commission employed by the municipal commission in the distribution and supply of power for at least twelve months, and each new commission shall

offer employment to the employees designated in respect of the area municipality served by the new commission.

(3) On or before the date specified in a by-law mentioned in subsection 26g (2), Ontario Hydro shall designate those of its current employees employed in the distribution and supply of power in the area municipality to which the by-law relates for at least twelve months, and the new commission to which the by-law relates shall offer employment to the employees so designated.

Ontario  
Hydro

(4) A person who accepts employment under this section is entitled to receive, for a period of one year commencing on the transfer date, a wage or salary not less than the wage or salary the person was receiving on the day nine months before the transfer date.

Wages or  
salaries

(5) Each new commission shall be deemed to have elected to participate in the Ontario Municipal Employees Retirement System on the day this Part comes into force, and a person who accepts employment under this section shall be deemed to continue or to become a member of the System, as the case requires, on the person's transfer date, and the *Ontario Municipal Employees Retirement System Act* applies to the person as a member of the System.

Partici-  
pation in  
O.M.E.R.S.

R.S.O. 1980,  
c. 348

(6) When a person who accepts employment under this section with a new commission is entitled immediately before the person's transfer date to the benefit of a supplementary agreement between the Ontario Municipal Employees Retirement Board and the municipal commission that designated the person under subsection (2), the new commission shall assume, in respect of the person, all rights and obligations under the supplementary agreement as if the new commission had been a party to the agreement in the place of the municipal commission.

Supple-  
mentary  
agreements

(7) Where a person who accepts employment under this section is a contributor to The Pension and Insurance Fund of Ontario Hydro immediately before the person's transfer date, the present value of the pension earned by the person in The Pension and Insurance Fund of Ontario Hydro at the transfer date or the contributions of the person in the Fund with interest accumulated and credited to the person in the Fund, whichever is the greater, shall be transferred to the Ontario Municipal Employees Retirement Fund and the person shall be given credit in the Ontario Municipal Employees Retirement System for a period of service equal to the period of service for which he was given credit in The Ontario Hydro Pension and Insurance Plan.

Transfer of  
pension  
credits  
from Ontario  
Hydro Plan



Pension  
guarantee

(8) Notwithstanding subsection (5), a person who accepts employment under this section with a new commission and who,

- (a) was employed by Ontario Hydro immediately before the person's transfer date; and
- (b) continues in the employment of a municipal hydro-electric commission until the person or the beneficiary of the person becomes entitled to a pension benefit,

is entitled to at least the pension benefit the person would have been entitled to under The Ontario Hydro Pension and Insurance Plan if the person's years of continuous service with the commission had been additional years of continuous service with Ontario Hydro and if there had been no change in the Plan after the transfer date, calculated on the basis of the wage or salary paid to the person by Ontario Hydro and the commission, and the cost, if any, of the pension benefit over the cost of the pension benefit to which the person is entitled under subsection (5) shall be apportioned and paid by the body and in the manner provided by the regulations.

Group life  
insurance

(9) A person who accepts employment under this section is entitled as a term of the person's employment to continue as a member of the group life insurance plan in which the person was a member with the person's former employer until the effective date of a common group life insurance plan covering all eligible employees of the person's new employer.

Idem

(10) On or before the 31st day of December, 1985, each new commission shall provide a common group life insurance plan covering all of the eligible employees of the new commission, and the plan shall provide to any person accepting employment under this section, by option or otherwise, insurance coverage not inferior to the insurance coverage to which the person was entitled immediately before the person's transfer date.

Sick leave

(11) A person who accepts employment under this section shall continue to enjoy the rights and benefits of sick leave entitlements or sick leave insurance provided by the former employer of the person immediately before the person's transfer date until the new employer establishes a sick leave entitlement plan or sick leave insurance plan, and thereupon the person shall receive allowance or credit for any accrued sick leave rights or benefits.



(12) Each new commission shall continue the provision of life insurance to pensioners formerly employed by a municipal commission in the distribution and supply of power in the area municipality served by the new commission.

Life insurance provided to pensioners

(13) Nothing in this section prevents an employer from terminating the employment of an employee for cause.

Termination for cause

(14) Where, in the opinion of the Minister, a person who is designated or who accepts employment under this section experiences any difficulty or hardship with regard to life insurance benefits, pension rights, pension benefits or sick leave rights or benefits, the Minister by order may do anything necessary to remedy or alleviate such difficulty or hardship.

Special circumstances

**26n.**—(1) For the purposes of section 120, the 1st day of January, 1985 is the date determined by the Minister in respect of all areas within the Regional Area and on that date the municipal commissions supplying only electrical power and energy in all areas within the Regional Area immediately before the coming into force of this Part are dissolved and any by-laws establishing them passed under sections 37 and 39 of the *Public Utilities Act* shall be deemed to be repealed and the assent of the municipal electors is not required.

Dissolution of existing commissions

R.S.O. 1980, c. 423

(2) Subsection (1) does not apply to the City of Sudbury or to the Sudbury Hydro-Electric Commission.

Exception

**26o.** The Lieutenant Governor in Council may make regulations,

Regulations

(a) for the purpose of subsection 26i (3) in respect of,

- (i) the method of determining the original cost of the assets or of any asset or of any part of any asset,
- (ii) the allocation of the original cost of the assets or of any asset or of any part of any asset,
- (iii) the method of determining the amount of any component of the accumulated net retail equity,
- (iv) the allocation of the accumulated net retail equity or any component of the accumulated net retail equity,

- (v) the method of calculating accumulated depreciation of any component of accumulated depreciation,
  - (vi) the allocation of accumulated depreciation or any component of accumulated depreciation,
  - (vii) the method of payment of the price of the assets;
- (b) for the purposes of subsection 26m (7) in respect of the apportionment and payment of the excess cost of any benefit referred to in the subsection.

Commence-  
ment

**2. This Act comes into force on the day it receives Royal Assent.**

Short title

**3. The short title of this Act is the *Regional Municipality of Sudbury Amendment Act, 1984*.**









